

# ADOPTION OF FINE AND ENFORCEMENT POLICY

WHEREAS, the Board of Directors is charged with the responsibility for enforcing the provisions of the declaration, and to seek damages/relief in a fair and uniform manner,

WHEREAS, the Bylaws for the Association direct this responsibility to the Board of Directors of the Association; and

WHEREAS, the State of Florida under its laws grant this Association these powers; and

WHEREAS, the Association has contracted with a professional management company to provide management service and supervision over certain contract services to the Association; and

NOW THEREFORE, be it resolved that the Board of Directors has elected to authorize it's managing agent to carry out the following policy with respect to all non-compliant properties, reserving to itself the right to modify or intervene in certain cases, as the Board may see fit.

RESOLVED, that the Directors hereby adopt the fine and enforcement policy attached hereto.

This is to certify that the Board of Directors adopted the foregoing resolution by unanimous consent, effective as of \_\_\_\_\_, until such date as it may be modified, rescinded or revoked.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

# Fine and Enforcement Policy

The following procedures have been adopted by \_\_\_\_\_ ("Association") pursuant to Florida Statutes, Chapter 720, at a regular meeting of the Board of Directors.

**WHEREAS**, the Board of Directors believes it to be in the best interest of the Association to adopt a uniform policy for Notice and Hearing and Enforcement Procedures.

**NOW, THEREFORE, BE IT RESOLVED** that the Association does hereby adopt the following policies and procedures for the enforcement of the Association's restrictive covenants:

**1. Power.** The Board of Directors shall have the power and duty to hear and make decisions regarding violations and written Complaints filed with the Board and impose fines or other sanctions, pursuant to these Policies and Procedures. The Board may determine enforcement action on a case by case basis, and take other actions as it may deem necessary and appropriate to assure compliance with the Associations' declaration ("Declaration"), the Association's Articles of Incorporation, Bylaws, and rules and regulations promulgated thereunder, and to create a safe and harmonious living environment.

These enforcement provisions may be in addition to other specific provisions outlined in the Association's Declaration, Articles of Incorporation, Bylaws or Rules and Regulations ("Governing Documents"), and the Association is not required to follow these enforcement provisions before seeking such other remedies. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control, as it deems appropriate.

The Board of Directors, in its sole discretion, shall at all times have the right to not take action on a matter, not withstanding anything in this Policy to the contrary.

**2. Complaint.** A violation may be committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. The Association will seek to provide notice to the violating party, but the Owner is responsible for violations which occur on an Owner's Lot without regard as to whether those violations were committed by an occupant other than the Owner, or the Owner's family, guests, employees, contractors, agents or invitees.

If a complaint regarding a violation is registered by a Member of the Association, and this violation would result in the Owner (violation) or other party receiving a certified notice proposing fines from the Association, the Member must provide fair and concise documentation of the violation in a form appropriate for the violation. The documentation should specify the violation and note the time, date and degree of the violation, as applicable. Forms of documentation include, but are not limited to, written logs, photos, neighbor testimonials, and video or audio recordings. Complaints which are received without documentation *and* which cannot be independently observed and documented by a representative of the Board of Directors or the Management Company, will not be acted upon.

The manager of the Association has the authority to send violation notices. In certain circumstances, the Board may direct the manager to suspend an Owner or occupant's right to use common area of the Association, suspend an Owner's right to vote on any matter which may properly come before the membership of the Association, or levy charges for damages incurred by the Association as a result of the violation. In general, however, the penalty for violation of the covenants, guidelines or rules will be the assessment of a fine against the Owner and/or violating party.

**3. Notice of Complaint and Right to Hearing.** Upon receipt of a Complaint, if the Board determines, in its discretion, that the allegations in the Complaint are sufficient to constitute a violation of the Governing Documents and that action is warranted, the Association shall send a notice to the person(s) (the "Respondent") alleged to have violated the Governing Documents, by prepaid, first class United States mail addressed to the mailing address of the Respondent appearing on the

records of the Association. The notice shall advise the Respondent of the following:

1. describes the violation or property damage that is the basis for the fine;
2. informs the violating party that they are entitled to a reasonable period to cure the violation (itemizes the action needed) and avoid the fine; and
3. his or her right to be heard, either orally or in writing, by the Board or by a tribunal or committee appointed by the Board at the next meeting of the Board which is at least fifteen days after the date of the notice;
4. the date on which the hearing will be scheduled; and
5. the Board's right to proceed with or without a hearing, at its discretion, to make its determination of the allegations contained in the Complaint based on all relevant facts and circumstances, if the Respondent fails to appear at the specified date and time or otherwise respond to the Complaint. **The Board may determine that the Respondent's failure to respond or appear at the hearing constitutes a no-contest plea to the Complaint and enforce the provisions of the Governing Documents.**

**4. Hearing.** The Board shall appoint a Hearing Panel consisting at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee before a fine or suspension of the Member's voting privileges may be imposed. Each hearing shall be held upon fourteen days notice at the scheduled time, place and date, unless the Respondent has failed to respond or appear at the hearing. The Board may grant continuance(s) for good cause. The Board may: (a) exercise its discretion as to the specific manner in which a hearing shall be conducted; (b) question witnesses and review evidence; and (c) act as it may deem appropriate or desirable to permit the Hearing Panel to reach a just decision. Neither the Complainant nor the Respondent must be in attendance at the hearing, but both are encouraged to attend. Any party may elect not to present evidence at the hearing. Action taken by the Hearing Panel shall be fair and reasonable taking into consideration all of the relevant facts and circumstances. Each hearing shall be open to attendance by all Members of the Association.

**5. Decision.** If the Respondent does not appear but a written response is filed, the Hearing Panel shall render its decision based on the information contained in the Complaint and the written response, considering all of the relevant facts and circumstances. If neither an appearance nor a written response is made, the Hearing Panel need not conduct a hearing or make any further findings except that it may determine that the Respondent's failure to appear or respond constitutes a no-contest plea to the Complaint, and impose the sanctions provided for herein or enforce the provisions of the Governing Documents, or both. If an appearance is made, after all testimony and other evidence has been presented to the Hearing Panel at a hearing, the Hearing Panel shall render its decision(s), taking into consideration all of the relevant facts and circumstances. Except as provided herein, the Hearing Panel's decision shall have an effective date no sooner than five (5) days after the hearing. If the Hearing Panel does not inform the Respondent of its decision at the time of the hearing, or if no hearing is held, the Hearing Panel will provide a written decision to the Respondent's address of record via regular U.S. Mail within five (5) days after the hearing.

**6. Enforcement, Attorney's Fees, and Fines/Sanctions.** The provisions of these Policies and Procedures shall not limit, or be a condition precedent to, the Association's right to enforce the Governing Documents by any means available to the Association, including, but not limited to, commencement of a lawsuit to force compliance or seeking injunctive relief or damages. The Association shall be entitled to reimbursement of all reasonable attorney's fees and costs incurred by the Association in connection with any enforcement action, including any proceeding under these Policies and Procedures. Without limiting the Association's remedies under the Governing Documents, the Association may assess fines and suspend membership privileges in accordance with these Policies and Procedures. If the violation involves damage to Association property, the violator shall pay the costs of repair or replacement. The Board may revoke or suspend the violator's privileges for a period of time equal to the duration of the violation, except that any suspension of voting rights of a Member shall not exceed 60 days following any violation by such Member unless such violation is a continuing violation, in which case such suspension may continue for so long as such violation continues and for up to 60 days thereafter.

- A. Fines may be levied for violations of the Governing Documents as follows:

Number of violations in a 12 month period Fine Amount:

**First violation:** Warning letter, if timely corrected

**Subsequent violation:** SEE YOUR COMMUNITY FINE SCHEDULE

A member or guest who accumulates more than 4 violations within a 12 month period will be deemed to be a habitual offender. Without limiting the Board's ability to fine or suspend membership privileges in accordance with these Policies and Procedures, habitual offenders, continuing violations, or violations which have an indefinite commencement or termination date, shall all be subject to a fine equal to twice the published amount until the violation is corrected, and suspension of membership privileges as determined by the Board. Further, in the event of a determination by the Board of a willful, wanton or flagrant disregard for the provisions of the Governing Documents, or based on the severity of the violation, the Board may impose such additional fines as are deemed reasonable by the Board without regard to the schedule set forth above.

- B. The record Owner of real estate subject to the Declaration shall have the primary obligation to pay fines imposed for their actions and actions of their tenants, family members, and guests. Fines imposed pursuant to these enforcement policies and procedures shall become an Assessment imposed against the record Owner's real estate and enforceable as provided in the Declaration.

**7. Violations or Offenses that Constitute a Present Danger.** If, in its sole discretion, the Board deems that any violation is or maybe an immediate or substantial threat to the health, safety or welfare of the community or an individual, the Board may impose any appropriate sanction as necessary to abate the threat to health, safety or welfare of the community or individual without prior compliance with Sections 1 through 6 above of which costs shall be applied to the Owner of Record.

**8. Miscellaneous.**

- (a) Failure by the Association to enforce any provision of these Policies and Procedures shall in no event be deemed to be a waiver of the right to do so thereafter.
- (b) The provisions of these Policies and Procedures shall be independent and severable. The invalidity of any one or more of the provisions hereof by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.
- (c) As used herein, the term "Board" shall include any tribunal or committee appointed by the Board consistent with the Governing Documents or consistent with Florida law.

**Note:**

Members should review the Association governing documents, published rules and policies of this Association along with Chapter 720 of the Florida Statutes. The documents are available online by visiting [www.myHomeSpot.com](http://www.myHomeSpot.com).

**PROCESS FOR HEARING BEFORE THE BOARD**

*Note: An individual of the Hearing Panel will act as the presiding hearing officer. The hearing officer will provide introductory remarks and administer the hearing agenda.*

**Introduction**

Hearing Officer. This Hearing Panel has convened for the purpose of hearing an appeal by \_\_\_\_\_ (Member) from the penalties imposed by the Association for violation of the covenants, guidelines or rules of the Association.

The hearing is being conducted as required by Florida Statute 720 and is an opportunity for the appealing party to discuss, verify facts, and resolve the matter at issue. The Board would like to resolve the dispute at this hearing.

Whereas the Member was issued a Violation letter on {date} for {describe violation} and the member disputes that a Fine should be imposed. That this meeting was noticed to the parties on {date} by {notification method}. Does anyone object that the procedure and notice requirements for this meeting have not been met?

Whereas the Board of Directors has appointed a Hearing panel this date in accordance with Florida Law to determine if the Member should be fined.

**Presentation of Facts:**

Hearing Officer.

This portion of the hearing is to permit a representative of the Association the opportunity to describe the violation and to present photographs or other material relevant to the violation, fines or penalties. After the Association’s representative has finished his presentation, the owner or its representative will be given the opportunity to present photographs or other material relevant to the violation, fines or penalties. The Hearing Panel may ask questions during either party’s presentation. It is requested that questions by the appealing party be held until completion of the presentation by the Association’s representative.

[Presentations]

**Discussion:**

Hearing Officer.

This portion of the hearing is to permit the Board and the owner to discuss factual disputes relevant to the violation. Discussion regarding any fine or penalty is also appropriate. Discussion should be productive and designed to seek, if possible, an acceptable resolution of the dispute. The Hearing Officer retains the right to conclude this portion of the hearing at any time.

**Resolution:**

Hearing Officer.

This portion of the hearing is to permit the Board and Appealing Party regarding the final terms of the Settlement if a resolution was agreed upon during the discussion phase of the hearing.

If no settlement was agreed upon, the Hearing Officer may request that the Hearing Panel enter into executive session to decide the matter.

### Member Presentation Highlights:

1. The Complaint must be written and evidenced and can be made by member, Board, Manager or designee.
  - a. Complainant must itemize nature of violation against Rule or CCR specifically and must completely identify themselves (the Board will hold them anonymous – but they must be identifiable by the Board).
  - b. The Complaint must be evidenced by photo-video-audio, testimony of witness or other physical means of evidence identifying the Violation reported, along with specific compliance instructions.
  - c. ARC – Board – Manager to qualify complaint for Informal Notice.
2. INFORMAL Notice: Issued to Respondent in writing in behalf of Board notifying member of the Complaint and its evidence asking for voluntary compliance or contest of Violation. Recommend letter sent via regular mail and certified mail to lot address and to mailing address of member allowing a reply or contest within 7-14 days. Copy of Informal Notice sent to reporting member requesting they re-report incident if not complied by deadline. In case of Board, Manager or other non-member originated complaint a re-inspection will be done by that body.
3. INFORMAL Notice RESPONSE:
  - a. Member denies violation – then matter is referred to Board for re-qualification. If the Board determines that a Violation persists – then a FORMAL Notice of Violation shall be issued accordingly with evidence and specificity of the violation.
  - b. Member affirms and cures violation – incident is set to “resolved” status
4. FORMAL Notice: A formal violation notice issued to a member shall assert the violation in specificity and with evidence instructing specific corrective actions within 14 days from the date of the written notice (allowing 3 days for delivery). The formal notice shall contain a grievance provision along with the fine structure of the association that may be imposed along with other sanctions (suspension of voting and referral to legal, etc) if the member continues the violation greater than the corrective period of 14 days. The Association shall have the obligation to evidence further non-compliance per diem of fine imposition.
  - a. Grievance: The member shall be allowed to request a Hearing Panel (X persons not related to Board to represent the Association – not the Board or the Member. The Hearing Panel usually consists of 3 persons with 2 alternates should the member of Board determine a conflict of interest which shall be itemized by the aggrieved party. Neither the Board or the Member will select the panel, rather it shall be random by pre-determination or lottery.) This Hearing Panel shall set a date for all parties to meet and present evidence. The panel shall then decide if a fine should be imposed or not. This decision shall be final, but not limit the Board’s rights to

- injunctive relief by legal counsel. The member shall be entitled to the remedies set forth by Florida Statute which include a mediation session pursuant to Chapter 720.
- b. Continued Violation without reply. The member's failure to reply is deemed as "No Contest" to the violation and any non-compliance exceeding the required date of compliance shall result in the fine imposition. The Policy of the Association shall control the limits and secondary action steps for resolution.
  - c. Member complies within allowable period. The matter is set to a resolved status and remains a part of the incident file for 12 months.

In this scenario above, the member is given 14 days informally to correct a violation, then if re-qualified by the Board – another 14 days to remedy before a fine is imposed. If the member contests the fine – then given less than 15 days for a hearing of which the fine will be imposed/opposed within 5 days after the Hearing determination. This allows a minimum of 2 notices and 28 days prior to a fine. The Board and the Member still have all legal rights available to one another – but this process is intended to avoid the legal expenses and resolve issues by cooperation and mediation.

It is recommended by myHomeSpot.com that a complete list of Rules and the Fine Structure be incorporated into this document and PUBLISHED each year by mail to the membership prior to the Annual Meeting. The membership at the meeting shall be allowed to vote each year to adopt the Revised Edition by the Board/Committee. If majority assent – then made a record of the Association, if dissent – then the revised edition shall not be enforceable. This recommendation will prevent the "knee jerk" reactions by all sides.