

## **CASTLE PINES HOMES ASSOCIATION, INC.**

### **COVENANT ENFORCEMENT COMMITTEE**

### **ADMINISTRATIVE PROCEDURES**

#### **Authority**

The Covenant Enforcement Committee was established pursuant to Association Rule II(4) and ratified by resolution of the Association Board on 6 August 2001.

#### **Purpose of Enforcement Committee**

- To adopt and follow administrative procedures intended to identify violations of Covenants and Rules; to enforce the Covenants and Rules equitably; and to assure the fair and equitable treatment of alleged violators;
- to receive and hear complaints from Association Members or Association staff members alleging violation of Covenants and/or Rules;
- to determine whether a violation of Covenants and/or Rules has occurred; and
- to initiate appropriate action to re-establish compliance with the Covenants and Rules, correct any violation, and where appropriate and permitted by the Rules, to assess fines or impose other sanctions upon violators.

#### **Notices of Violation; Complaints**

Enforcement actions are initiated by the filing of a Notice of Violation (“NOV”) or a complaint letter (collectively referred to herein as a “Complaint”) concerning alleged violations of the Covenants and/or Rules. Complaints are required to be made in writing. The complainant may be either an individual Association Member or a member of the Association’s hired staff charged with responsibility for Covenant and Rules enforcement. The signed Complaint must identify the Covenant(s) and/or Rules(s) allegedly violated and describe in reasonable detail the facts of the alleged violation.

#### **Procedure for “Automatic Fine” NOVs and Complaints**

The Directors of the Association, at their regular meeting on 18 July 2001, adopted a resolution intended to facilitate the administration of enforcement of “objective” violations of Covenants and/or Rules. An “objective” violation is a situation in which, assuming the facts to be true, a violation clearly has occurred; for example, an Association Member is stopped for speeding by an officer of the Emergency Services Department after being clocked by radar, or a trash dumpster is observed by the officer to be uncovered after construction hours.

The resolution, attached as Exhibit “A,” authorizes the issuance by Association staff of a Complaint indicating the assessment of an “automatic fine” for violations of the Covenants and/or the Rules *which have associated with them in the Rules a “presumptive fine.”* The “automatic fine” Complaint is, in effect, a summons to appear and serves as formal notice to the alleged violator of his right to appear and be heard by the Association through its

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Enforcement Committee. When a Complaint indicating an automatic fine is issued, the alleged violator has the opportunity either (1) to pay the presumptive fine and have the matter dismissed [in much the same manner as paying a parking ticket] or (2) to contest the Complaint and/or the presumptive fine and appear before the Enforcement Committee to be heard. When an alleged violator elects to appear before the Enforcement Committee – either through written notice to the Association or by failing to pay the presumptive fine when due – the Enforcement Committee will administer the matter as described in the next section below.

**Procedure for Other [Non-Automatic Fine] Complaints**

When the type or gravity of the alleged violation does not, in the judgment of the observing officer or Association Manager (“Manager”), constitute an “objective” violation amenable to remedy through the “automatic fine” procedure, or when extenuating circumstances make the “objective” violation egregious, the Manager and his staff and the Enforcement Committee shall follow the procedure outlined immediately below.

**Report of Alleged Violation; Notice of Violation or Complaint**

The Design Review Committee Administrator, the Director of Emergency Services, or their designates, upon observation or report of, and upon preliminary determination of, a Covenant or Rules violation, shall prepare a Complaint describing the alleged violation and deliver it to the Manager. The form of the Complaint may be a pre-printed NOV ticket or a complaint letter.

**Initial Review.** The Manager shall review the allegations in the Complaint and, assuming that the facts are true, determine whether there is a violation of the Covenants or Rules. If the Manager determines from the facts of the situation that a violation has occurred, then the Manager, on behalf of the Association and its Enforcement Committee, shall schedule a place and time for a hearing and issue a *Notice of Hearing* to the alleged violator, as described in the next section, to serve as formal notice of the alleged violation and the opportunity to be heard. If the Manager, assuming that the facts are true, determines that there is *not* a violation, then the Manager on behalf of the Association shall dismiss the Complaint and shall so notify the complainant.

**Notice of Hearing.** The *Notice of Hearing*, to be sent by the Manager, shall transmit a copy of the Complaint and shall be mailed by certified and regular first-class mail. In addition, a copy of the *Notice of Hearing* shall to be sent to any “Directly Interested” person by first-class mail. “Directly Interested” is defined in Rule XI to be a person who is subject to penalties in Rule XII. *Notices of Hearing* must also be posted in a public place which, unless otherwise directed by the Committee, shall be at the Association’s administrative offices. *Notices of Hearing* shall be mailed not less than ten (10) nor more that thirty (30) days from the date of the hearing. The written *Notices of Hearing* shall meet all the requirements of Section 7.4.2 of the By-laws and shall contain:

- the nature of the alleged violation;
- the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the *Notices of Hearing*;

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- an invitation to attend the hearing and produce any statement, evidence, and witness on the accused's behalf;
- the sanction proposed to be imposed.

Additionally, the notice shall also advise the accused of his or her right to be represented by counsel and to examine any witness.

An acceptable form of *Notices of Hearing* is attached as Exhibit "B."

Conduct of Hearings. Hearings shall be conducted according to the procedure set forth in Chapter XX of *Robert's Rules of Order, Newly Revised*.

*Executive Session.* Hearing shall be held in an executive session of the Committee. Attendance shall be limited to the Committee, the Manager, the Hearing Manager, the complainant, the alleged violator, witnesses (during their testimony), and their respective legal counsel (if present). Witnesses are not sworn and the Committee is not required to follow any specific rules of evidence. At the start of the meeting, the chairperson should advise all present that the meeting is an executive session and that there is an obligation of secrecy regarding communications to non-members of the Committee.

*Hearing Manager.* The Committee shall appoint a Hearing Manager who may, but need not, be the Association Manager or the chairperson of the Committee. The Hearing Manager presents the charges, calls for the testimony of witnesses, and/or presents evidence of the matter.

*Hearing Sequence.* The sequence of the hearings shall be as follows.

1. The charges are read by the Hearing Manager or a member of the Committee.
2. The accused is asked to plead guilty or not guilty to each charge. If the accused fails to appear, the hearing proceeds without him. A judgment by default may *not* be entered for failure to appear.
3. If there is a plea of guilty, no discussion of the violation need be held and the hearing can proceed directly to the determination of means of restoration of compliance and assessment of a fine or imposition of other sanctions.
4. If the accused pleads not guilty, each side is permitted the right to present opening statements.
5. The Hearing Manager then presents complainant's witnesses and/or evidence.
6. The accused is permitted to question the Hearing Manager, the complainant, and/or complainant's witnesses.
7. The accused is then allowed to present witnesses and/or evidence.

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8. The Committee is allowed to question the Hearing Manager, the complainant, the accused, and/or their witnesses.
9. Rebuttal witnesses and evidence of the Hearing Manager and the complainant, if any, are then heard.
10. Closing arguments of the Hearing Manager and the accused (or their respective legal counsel) are then heard.

*Deliberation; determination.* At this point, the Committee withdraws (or dismisses all others), deliberates, and reaches a determination – guilty or not guilty. Should the complainant or the accused require it, voting shall be by written secret ballot. The hearing is then reconvened with all appropriate persons present. The chairperson announces the Committee’s determination. If the determination is “not guilty,” the hearing is adjourned.

*Re-establishment of Compliance; Penalty.* If the determination is “guilty” on any charge, the next item of business is (1) determination of an appropriate means of reestablishing compliance with the violated Covenant(s) and/or Rule(s) and (2) determination of penalty and/or other sanctions. Evidence and argument are allowed in this process. The presumptive choices of penalty are set forth in Rule XII, a copy of which is attached as Exhibit “C.” The Committee makes and announces its determination as to means of reestablishing compliance and imposition of penalties and/or sanctions. They both are imposed by motion and are reflected in the minutes.

*Findings.* The Committee shall prepare a *Notice of Findings and Determination* describing in reasonable detail the violation and the action taken by the Committee. The original *Notice of Findings and Determination* is delivered to the complainant. Copies are delivered to the violator and the Association Board, with a third copy being placed in the records of the Committee. The finding may be incorporated in the minutes of the meeting.

Appeal. Under Rule XI(7), any “Directly Interested” Association Member may petition the Association Board for a hearing on appeal of the decision, means of reestablishing compliance, and/or penalty. The petition for appeal, which shall be in writing, must be deposited in the mail or hand-delivered within five (5) days after the Committee’s *Notice of Findings and Determination* is mailed to the violator and complainant. The petition shall request an appeal and shall set forth the specific grounds for the appeal. The submission of a petition for appeal shall automatically stay the imposition of the requirement to restore compliance and the penalties and/or sanctions imposed by the Committee unless the Committee has found that “irreparable injury” will result if the stay were in place.

[end]