

## **Rules for (1) Enforcing the Governing Documents and (2) Fines**

### **THE CEDAR HIGHLANDS HOMEOWNERS ASSOCIATION**

**WHEREAS** the Association Board has the responsibility to enforce the provisions of The Cedar Highlands Homeowners Association (“the Association”) Governing Documents (defined below) in order to preserve and enhance the appearance, appeal, and overall value of Association property.

**WHEREAS**, the Association seeks to adopt a complaint driven policy of enforcement and strongly encourages Lot Owners to informally attempt to resolve any complaints with their neighbors before formally filing a complaint with the Board.

**WHEREAS**, one enforcement tool is the ability of the Association to levy fines for violations of the Articles of Incorporation, Subdivision Plats, Declaration, Bylaws, Board Resolutions, Architectural Standards and Design Guidelines and Rules and Regulations (collectively referred to as “Governing Documents”), as such Governing Documents may be amended.

**WHEREAS**, when used properly, the levy and collection of fines is an efficient tool for encouraging compliance with the Governing Documents. In addition, levying fines is much more cost effective than the alternative of enforcement through the judicial system. However, at times it may be more beneficial to the Association and its members to proceed with corrective action as provided for in the Declaration or judicial action in addition to, or in lieu of, fines.

**WHEREAS**, at a Board meeting of the Cedar Highlands, HOA (the “Association”) held on August 31, 2019, which meeting was called pursuant to Utah Code § 57-8a-217, the following Rules were adopted.

**WHEREAS**, pursuant to Utah Code § 57-8a-217(2)(a), reasonable notice that the Board was considering adopting the following Rules at the meeting of the Board was delivered fifteen (15) days, plus the additional time below for “effective” delivery, to the Owners by one or more of the following means:

- (a) when sent by facsimile, the notice is deemed when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;
- (b) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed at the earliest of the following: (a) when received; (b) six (6) days after it is mailed; or (c) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;
- (c) If the Association has a provision in its governing documents for electronic communications with its members, then when sent via electronic means such as an e-

mail, text message or similar electronic communication, the notice is deemed within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;

- (d) If the Association has a provision in its Governing Documents for electronic communications with its members, then when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;
- (e) when hand delivered, the notice is deemed immediately upon delivery; or
- (f) when delivered by other means, the notice is deemed upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

**WHEREAS**, at the meeting, the Board provided an open forum giving Owners opportunity to be heard before the Board adopted the Sections. (Utah Code § 57-8a-217(2)(b)).

**WHEREAS**, a copy of these Rules was delivered to Owners within fifteen (15) days after the Board meeting. (Utah Code § 57-8a-217(2)(c)).

**WHEREAS**, Pursuant to Utah Code § 57-8a-217(4), notice is given to Owners that they have sixty (60) days after the Board meeting to disapprove of the Board's adoption of this Rule. Disapproval is only effective if there is a vote of at least fifty-one percent (51%) of the allocated voting interests of the Owners in the Association and the vote is taken at a special meeting called for that purpose by the Owners as provided for in the Declaration, Articles of Incorporation, or Bylaws. However, the Board has no obligation to call a special meeting of the Owners to consider disapproval unless the Owners submit a petition, in the same manner as provided for in the Declaration, Articles of Incorporation, or Bylaws for a special meeting to be held. Should the Board receive such petition, the Rule will remain in effect, but actions to enforce will be stayed pending and subject to the outcome of the special meeting.

**NOW THEREFORE**, the following Rules are hereby adopted:

### **I. ENFORCEMENT POLICY**

1. Owners shall be responsible for the improper actions or damages caused by themselves, their residents, tenants, guests, and other invitees. Furthermore, pursuant to Utah Code 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the Governing Documents by the tenant.

2. Fines will only be made for violations of rules and covenants, conditions, or restrictions contained in the Association's Governing Documents.

3. If two (2) Lot Owners each separately submit a written complaint against another Lot Owner to the Board within a thirty (30) consecutive day period -- or such longer time as the Board may determine is appropriate under the circumstances -- then the Board shall conduct a formal review of the matter.

4. In addition to individual Lot Owners being able to file complaints, the Board may also file complaints in its capacity as the Association's Board through a majority vote of the quorum of the Board.

5. If one (1) or more complaints are signed by Lot Owners, dated, and sufficiently clear and credible in the establishment of probability that a Lot Owner has committed or is committing a violation of the Association's Governing Documents, or if a complaint is filed by the Board, the Board may send a "friendly reminder" to the Lot Owner alleged or, at the Board's election, may send a "warning letter" under the Fine Policy below.

6. If the "friendly reminder" or "warning letter" is not timely complied with, the Board may take such further enforcement action as it deems appropriate under the Association's Governing Documents.

7. Under Utah Code 57-8a-213, the Board may use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, including: (i) whether to compromise a claim made by or against the Board or the Association; and (ii) whether to pursue a claim for an unpaid assessment. The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) (A) a technical violation has or may have occurred; and (B) the violation is not material as to a reasonable person or does not justify expending the Association's resources; or (iv) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

If the Board decides to forego enforcement, the Association is not prevented from later taking enforcement action. Moreover, this section does not govern whether the Association's action in enforcing a provision of the Governing Documents constitutes a waiver or modification of that provision.

8. This Enforcement Policy does not apply to collection of assessments, actions for injunctive relief, or actions or remedies pursued by the Association for the protection of the health, welfare, and safety of the properties within the Association's jurisdiction.

9. To the extent any conflict exists between these Rules and Regulations and any law, statute or governmental ordinance, or any provision of the Declaration, then the provisions of the law, statute, or ordinance, or the Declaration, shall govern and take precedence over the provisions of these Rules and Regulations.

## II. FINE POLICY

### A. Schedule of Fines.

1. **General Schedule of Fines.** Fines will be assessed for any violation or non-compliance with the Association's Governing Documents as specifically provided for in the General Schedule of Fines as set forth in Exhibit A hereto.

2. **Establishment of a Violation.** Any violation of the Governing Documents of the Association is subject to a fine as provided for in these Rules.

### 3. Violation Notices.

a. **Initial Reminder Notice.** Upon indication by two (2) Owners of the existence of the probability of a violation of the Governing Documents or a complaint from a Board member, the Board or its agent, may, but is not required to, issue a "Friendly Reminder" (otherwise known as the "Initial Reminder Notice") by way of phone call, business/post card, email, letter or door hanger, which will notify the recipient of the following:

- (i) The nature, description, and location of the violation;
- (ii) Contact information and reference information on the provisions of the Governing Documents being violated, in the event that the Owner or tenant may simply be unaware that the noted problem is in fact considered a violation; and
- (iii) A pleasant request to remedy the violation within the time requested by the Board.

b. **Written Warning.** Upon verification of the probability of a violation, and whether or not an "Initial Reminder Notice" has been sent, the Board or its agent shall cause to be sent to the Owner – prior to assessing a fine -- a Written Warning that the violation exists. The Written Warning will include the following:

- (i) A description of the violation;
- (ii) A statement of the rule or provision of the Governing Documents that the Owner's conduct violates;
- (iii) If the violation is a continuing violation, a statement of the time that is not less than forty-eight (48) hours after the day on which the Board of Directors gives the Owner the Written Warning by which the Owner shall cure the violation. A "continuing violation" is one that continues without interruption for a period of twenty-four (24) consecutive hours or more.

- (iv) For violations that are not a continuing violation, a statement that the Board of Directors may, in accordance with Utah Code § 57-8a-208 and the provisions of this Fining Procedure, assess fines against the Owner if the Owner commits the same violation within one (1) year after the day on which the Board of Directors assesses the initial fine against the Owner.
- c. Date Notice Deemed Given. Any notice sent pursuant to this Rule is effectively deemed given and received when delivered by one (1) or more of the following means:
- (a) when sent by facsimile, the notice is deemed when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;
  - (b) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed at the earliest of the following: (a) when received; (b) six (6) days after it is mailed; or (c) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;
  - (c) If the Association has a provision in its governing documents for electronic communications with its members, then when sent via electronic means such as an e-mail, text message or similar electronic communication, the notice is deemed within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;
  - (d) If the Association has a provision in its governing documents for electronic communications with its members, then when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;
  - (e) when hand delivered, the notice is deemed immediately upon delivery; or
  - (f) when delivered by other means, the notice is deemed upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.
- d. Failure to Comply/Basis for Initial Fine. Failure to comply with the Written Warning will result in one or more of the following (which shall be cumulative and not exclusive):
- (i) For non-continuing violations, a fine will be issued against the Owner if within one (1) year after the day on which the Board of Directors gives the Owner a Written Warning described above, another violation of the same rule or provision identified in the Written Warning. The fine will be deemed issued, without further warning, by sending a subsequent notice to the Owner that the same or similar violation has occurred and the fine is assessed.

