

September 17, 2022

Report written by Bobbie Heisterkamp for the Governance Committee.

This is the version we would like the Board to consider.

POLICY OF BIG ELK MEADOWS ASSOCIATION REGARDING POLICIES AND PROCEDURES FOR COVENANT AND RULE ENFORCEMENT Proposed revisions
2022

1. Reporting Violations.

Complaints regarding alleged violations may be reported by a Member or resident within the community, a group of Members or residents, ~~the Association's management Company, if any~~ Board member(s) by submission of a written complaint.

2. Complaints.

Complaints by Members or residents shall be in writing and submitted to the Board of Directors. The complaining Member or resident shall have observed the alleged violation and shall identify the complainant ("Complainant") and complainant's BEMA property address, the alleged violator ("Violator") and the violator's BEMA property address, if known, and set forth a statement describing the alleged violation, referencing the specific provisions in the rules or covenants which are alleged to have been violated, the date and time when the violation was observed and any other pertinent information. The Complainant should sign the complaint. Non-written complaints or complaints failing to include any information required by this provision may not ~~nv=~~be investigated or prosecuted at the discretion of the Association.

Complaints by a member of the Board of Directors, a committee member or the manager, if any, may be made in writing or by any other means deemed appropriate by the Board if such violation was observed by the Director or Manager.

3. Investigation.

Upon receipt of a complaint by the Association, if additional information is needed, the complaint may be returned to the Complainant or may be investigated further by ~~the Board designated individual or the Governance Committee. The Board shall have sole discretion on appointing an individual or committee to investigate the matter.~~ The Governance Committee shall: ensure the report is covered by the governing documents; draft letters to Claimant and Violator; create a work order for the Operations Manager if more information is needed and, once enough information is gathered, move to vote.

4. Initial Warning Letter

If the Board decides that a violation is found to exist, they will instruct the Governance Committee to prepare an initial warning letter documenting the violation, delivered as a ~~registered~~ certified return receipt mail for tracking purposes, which shall be sent to the Violator explaining the nature of the violation. The Violator will have 30 days from the date of the letter, or such other reasonable timeframe as stated in the letter depending on the violation, to come into compliance. The foregoing procedure will not be used, however, in the event the violation is determined by the Board to be a ~~Repetitious~~ Continuing Violation as defined in paragraph 12 of this Policy. In such an event the procedure outlined in paragraph 12 shall be followed.

5. ~~Continued~~ Second Violation After Initial Warning Letter

If the alleged Violator does not come into compliance within 30 days (or such other timeframe stated) of the initial warning letter, this will be considered a second violation for which a fine may be imposed following notice and opportunity for a hearing. A second and subsequent letter(s) shall then be sent via ~~registered~~ certified return receipt mail to the alleged Violator, providing notice of the continuing violation, the potential fine amount, and explaining if a continuing violation is found to exist, the potential fine may be imposed pursuant to this Policy.

The letter(s) shall further state that the alleged Violator is entitled to a Hearing on the merits of the matter provided that such hearing is requested in writing within 30 days of the date of the continuing violation letter. The foregoing procedure will not be used, however, in the event that the violation is determined by the Board to be a Repetitious Violation as defined in paragraph 12 of this policy. In such an event, the procedure outlined in paragraph 12 shall be followed. If a Violator is not in compliance and has not requested a Hearing, additional letters, fines and compliance checks could be required.

6. Notice of Hearing

If a Hearing is requested by the alleged Violator, the Governing Committee or other person conducting such Hearing as may be determined in the sole discretion of the Board, may serve a written notice, via ~~registered~~ certified return receipt mail, of the Hearing to all parties involved at least 7 days prior to the Hearing date.

7. Impartial Decision Maker.

Pursuant to Colorado law, the alleged Violator has the right to be heard before an "Impartial Decision Maker". An Impartial Decision Maker is defined under Colorado law as "a person or group of persons who have the authority to make

a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including architectural requirements, and other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association." Unless otherwise disqualified pursuant to the definition of Impartial Decision Maker, the Board may appoint to act as the Impartial Decision Maker the entire Board, specified members of the Board, any other individual or group of individuals.

8. Hearing.

At the beginning of each Hearing, the presiding officer, shall introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative, may, but is not required to, make an opening statement, present evidence and testimony, present witnesses, and make a closing statement. The presiding officer may also impose such other rules of conduct as may be appropriate under the given circumstances. Neither the Complainant nor the alleged Violator are required to be in attendance at the hearing. The Impartial Decision Maker shall base its decision solely on the matters set forth in the Complaint, results of the investigation and such other credible evidence as may be presented at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all Members. After all testimony and other evidence has been presented at a hearing, the Impartial Decision Maker shall, within a reasonable time, not to exceed 30 days, render its written findings and decision, and impose a fine, if applicable. Failure to strictly follow the hearing procedures set forth above shall not constitute grounds for appeal of the hearing committee's decision absent a showing of denial of due process.

9. Failure to Timely Request Hearing.

If the alleged Violator fails to request a hearing within 30 days of any letter, or fails to appear at any hearing, the Impartial Decision Maker may make a decision with respect to the alleged violation based on the Complaint, results of the investigation, and any other available information without the necessity of holding a formal hearing. If a violation is found to exist, the alleged Violator may be assessed a fine pursuant to these policies and procedures.

10. Notification of Decision.

The decision of the Impartial Decision Maker shall be in writing and provided to the Violator and Complainant within 30 days of the hearing, or if no hearing is requested, within 30 days of the final decision.

11. Fine Schedule. The following fine schedule has been adopted for all

recurring covenant violations:

First violation: Warning letter

Second violation: (of same covenant or rule): \$50.00 Third and subsequent violation:

(of same covenant or rule): \$100.00

Third and subsequent covenant violations may be turned over to the Association's attorney to take appropriate legal action. Any Member committing three or more violations in a six-month period (whether such violations are of the same covenant or different covenants) may be immediately turned over to the Association's attorney for appropriate legal action.

12. Repetitious Continuing Violations.

~~Repetitious~~ Continuing Violations are defined as a series of identical or substantially similar individual violations that occur repeatedly or continuously within a period of time to be determined in the discretion of the Board, with each individual violation separated by a period of no less than 1 day, nor more than 90 days, the result of which is a pattern of violations of the same covenant restriction.

In the event of such ~~Repetitious~~ Continuing Violation, in the discretion of the Board, each instance of noncompliance may constitute a separate violation, and the Board shall not be required to provide a period of 30 days from each violation for the alleged Violator to come into compliance. A warning letter shall be sent for the first violation in the series. After the warning letter, the Board may cause violation notices to be sent for each violation in the series stating the amount of the fine to be imposed (pursuant to the Fine Schedule in paragraph 11), and giving notice and an opportunity for a hearing. The Board shall individually consider each violation for which a hearing is requested, but is permitted to combine any and all Hearings requested for ~~Repetitious~~ Continuing Violations on one date.

The Member will receive a warning letter on the first instance of the violation. On the second instance of the violation, the Member will receive a \$50.00 fine letter, and notice and opportunity for a Hearing. On the third instance of the violation, the Member will receive a \$100.00 fine letter and notice and opportunity for a Hearing. On the fourth instance of the violation, the Member will receive a \$100.00 fine letter and notice and opportunity for a Hearing. If Hearings are requested, the Board may set them all on the same date. The maximum fine that can be imposed is \$450 per violation or \$500 for cumulative violations.

13. Waiver of Fines.

The Board may waive all, or any portion, of the fines if, in its sole discretion, such waiver is appropriate under the circumstances. Additionally, the Board

may conditionally waive the entire fine, or any portion thereof, upon the Violator coming into and staying in compliance with the Articles, Declaration, Bylaws or Rules.

14. Other Enforcement Means.

This fine schedule and enforcement process is adopted in addition to all other enforcement means which are available to the Association through its Declaration, Bylaws, Articles of Incorporation and Colorado law. The use of this process does not preclude the Association from using any other enforcement means.

15. Definitions. Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.

16. Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the Project.

17. Deviations. The Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances, such as determining to turn over an account to an attorney immediately, or deciding to levy a different fine amount depending on the nature or severity of the violation.

18. Amendment. This policy may be amended from time to time by the Board of Directors.

R.A.H.