

Windsor Creek Subdivision Homeowners Association, Inc.

Enforcement Policy Update
Effective June 1, 2016

Background

The Board desires to update its rules and to adopt a clear policy and procedure for enforcing rules, covenants and restrictions in accordance with Idaho law. The Board finds that it is in the best interest of the association and all of its members to use a standardized enforcement procedure to enforce the provisions of the covenants and restrictions; and to communicate a clear enforcement policy to all members and enforce it even-handedly and consistently.

Legal Authority

The Association's authority derives from the *Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windsor Creek Subdivision*, recorded as Instrument 200638423 on March 19, 2006, as it may be amended from time to time (the "Declaration").

The Association can adopt rules and regulations (including fines) pursuant to Article III, Section 3.4, and Article V, Section 5.5.1.4. The Association can enforce the Declaration's provisions pursuant to Article V, Section 5.5.1.2. The Association and its members are also bound to follow a dispute resolution procedure found in Article XV.

Idaho's HOA Fine Statute authorizes the Association to take legal action and impose and collect assessments for costs and legal fees incurred so long as the following process is adhered to. I.C. §55-115. This law has been amended so as to be effective July 1, 2016. This new rule change is in the best interest of the Association to comply with that change in the law.

Procedure

This rule change shall be effective June 1, 2016. A copy of this notice of rule change shall be kept in the Association records, available for inspection. Further, the Board shall arrange to have this procedure distributed to each member and resident.

Windsor Creek Subdivision Homeowners Association, Inc.
I7753-001

Standing Instructions to Agent

The Board shall designate in writing (including by management contract) an agent authorized to initiate enforcement actions and send notices to members on its behalf. No other person may do so. The Board, in its discretion, may contract for its agent to regularly inspect for violations, or may respond only to reports from members.

The agent may schedule a meeting up to once a month as needed. The agent may rely on the last notice of upcoming meetings when giving notice to violation offenders of their hearing date.

The Board gives the agent discretion to determine whether a violation should be decided to be actionable. The Board may adopt a written list of violations that should always be considered "Actionable." Any violations not on the list may be handled in the agent's discretion. The Board shall adopt a written list of fines to be kept in the office of the Agent. ***No fine money shall increase the remuneration of any Board member or agent of the Board.***

The Board hereby gives the agent full authority to negotiate or mediate any disputed violation on its behalf.

Board Waiver of Enforcement Meeting Notice

At this time, the Board consents to the following procedures for a special board meeting regarding pending violations only. Each member of the Board will keep a current email address on file with the agent. For the limited purposes of these enforcement and violation matters under this Policy, each member of the Board consents to receive notice by email of meetings and to hold meetings by email.

If no member has requested a hearing by the deadline, the Board may meet at the schedule time by email only and decide on pending violations by email.

On the day set for the meeting, the agent shall email the updated status of each violation that is undisputed, currently unresolved and requiring further action to each member of the Board and recommend the next step to be taken. If this is done, each Board member agrees that the meeting requirement has been met. Further, unless any Board member emails the agent that they disagree with the recommendation of the agent, the Board member votes favor of proceeding as recommended by the agent.

This process for remote meetings shall only be approved for violations and fines under

Policy, and for no other meeting purposes. A copy of all such email approvals shall be kept in the records of the Association.

Compliance Process To Be Followed by the Board and Its Agent

A. Initiation of Process

1. A written report of any violation of the Declaration to the Board (or its agent) or noncompliance with a deadline set by a prior violation notice shall initiate the enforcement process.
2. The Board (or its agent) will first review any report of violation to establish that it appears reliable and contains details sufficient to proceed.
3. Written violation reports should include time of violation, place, and photographs whenever possible.
4. The Board (or its agent) shall determine if the alleged violation is Actionable or Non-Actionable and follow the appropriate procedure.
5. The Board (or its agent) shall keep a record of any determination that a violation is Actionable.

B. Non-Actionable (Informal) Procedure

1. Give written notice by personal service, posting on the door of Property, or by first class U.S. mail to the member at the member's last known address. This "friendly notice" shall:
 - i. Describe the violation.
 - ii. Request actions to resolve the violation.
 - iii. Set a reasonable deadline for compliance (at least 10 days).
 - iv. Provide a contact for questions.
 - v. Explain that repeated failure to resolve pending violations can lead to a fine or legal action, and that all legal costs and fees will be assessed against the member.
2. Keep a record of the original violation, including a photograph if possible.
3. Set a time to review whether the deadline has been met. If it has not, document the non-compliance, with photographs if possible.
4. Decide how many friendly notices will be given for this type of violation. If the deadline has not been met, initiate the process again.

C. Initiating an Actionable Violation

1. The Board or its agent shall determine that a violation is Actionable if:
 - i. The member has repeatedly been issued notices for the same violation without resolving the violation;
 - ii. The violation is considered in the judgment of the Board or its agent to be an emergency, or may result in permanent or irreparable harm (for example, construction of an unimproved improvement or a violation

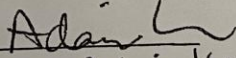
- that could lead to bodily harm or damage to person or property); or
- iii. The violation appears on the list of Actionable Violations or Fines currently adopted by the Board (to be kept in writing in the agent's office).
2. If a violation is determined to be actionable, the agent shall provide written notice by personal service (hand delivery) or certified mail (return receipt requested) to the member at the member's last known mailing address. This notice shall:
- i. Tell the member that the violation is one for which a fine and/or legal action may be taken.
 - ii. Describe the violation and include a call to action.
 - iii. Describe the fine amount, if any.
 - iv. Explain that legal action may cost hundreds of dollars, if it is taken.
 - v. Give notice of the date of the Board's next meeting that is at least thirty (30) days from the date of service of the Notice ("Hearing Meeting").
 - vi. Give notice that the Board will vote to approve the fines or pass the violation on for legal action at the Hearing Meeting, unless the violation is fully resolved or partially resolved in good faith prior to the Hearing Meeting.
 - vii. Give notice that this is the member's opportunity to resolve the violation without legal or other action such as fining, and give instructions to contact the agent in writing (including email) to negotiate a resolution prior to the Hearing Meeting. Explain that if the member fails to contact the agent in writing, the member will be deemed to not dispute the violation notice and waive any further rights to negotiate or mediate the claim.
3. In the event the member contacts the agent in writing, the agent shall attempt in good faith to resolve the dispute and cure the violation. The agent shall then either:
- i. Determine the violation is resolved or in process. Let the member know in writing that the violation is no longer set for a Hearing Meeting.
 - ii. Determine the violation is no longer disputed, but that the violation itself is unresolved. Contact the member, let the member know in writing that the violation is still set for hearing but that the violation itself is no longer disputed.
 - iii. Determine that the violation is disputed and unresolved. Attempt to schedule mediation. If mediation is successfully scheduled, postpone the hearing until mediation is resolved. If mediation is unsuccessful, or the member does not participate, continue with the Hearing Meeting as scheduled.

4. Hold the Hearing Meeting as scheduled. At the Hearing Meeting, the agent shall give the Board notice of:
- i. All undisputed, actionable violation notices given at least thirty (30) days prior to the Hearing Meeting and all pending, undisputed and unresolved violations.
 - ii. Any information submitted by the member for the Hearing Meeting.
 - iii. The agent's determination if the violation is fully resolved, partially resolved, or unresolved. For each partially or temporarily resolved violation, set a time to follow-up and determine if the member has continued to address the pending violation in good faith until fully resolved. This may be at the next regular Board meeting or sooner if required.
 - iv. The agent's recommendation to fine or not. If so, at what rate, and up to what limit before taking further action.
 - v. The agent's recommendation to take legal action or not, including by a legal warning letter or by self-help.
 - vi. By majority vote, decide whether to take the recommended action.
5. Notify the appropriate parties.
- i. Notify the member if the violation has been resolved, letting them know that no fine or charge has been imposed.
 - ii. Notify the member if fining has commenced and give the member notice of the rate of fines, the maximum fine before legal action will be taken, and how the member can resolve the violation.
 - iii. Notify legal counsel if the Board has decided to take legal action or corrective (self-help) action. Assess the member for the costs of enforcement as they are incurred. Legal counsel shall notify the member.

ADOPTED ON THE 1 day of June, 2016.

THE BOARD

hereby certify that this procedure was adopted by the vote of the Board at a properly-called meeting of the Board of Windsor Creek Subdivision Homeowners Association, Inc.


Name: Adair Kotes
Secretary/Treasurer