

# THE ESTATES AT CIENEGA CREEK PRESERVE COMMUNITY ASSOCIATION

## ENFORCEMENT POLICY

**WHEREAS**, Article III, Section 2, *Bylaws for The Estates at Cienega Creek Preserve Community Association* stipulates that the "Board shall have the powers and duties necessary for the administration of the affairs of the Association... The powers of the Board shall include, but not be limited to, all the rights, powers, privileges, duties, and obligations assigned to the Board in the Declaration, the Articles and these Bylaws." and;

**WHEREAS**, Article 7, Section 3 of the *Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Estates at Cienega Creek Preserve* (the "CCR's") stipulates that "By a majority vote of the Board, the Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules..." and;

**WHEREAS**, Article 7, Section 3 of the CCR's gives the Association the authority to enforce its covenants and rules, and that Section 33-1803 of the Arizona Revised Statutes permits the Association to impose reasonable monetary penalties on members for violations of its rules and regulations. and;

**WHEREAS**, The Board of Directors desires to adopt a policy for the enforcement of its Covenants, Conditions & Restrictions (CCR's) and rules and regulations;

**NOW THEREFORE**, BE IT RESOLVED that the Association hereby adopts the following procedures for enforcing the provisions of its governing documents:

**I. KNOWLEDGE OF VIOLATION(S)**

Information regarding violation of the CCR's and rules and regulations shall be obtained by Association site inspections, observations, reported Owner actions and/or receipt of complaints from residents. Complaints must be received in writing, and must identify the complainant.

**II. FRIENDLY REMINDER**

It is the policy of the Association to provide, wherever possible, an opportunity for an Owner to remedy or correct a condition or activity which is in violation of any of its governing documents. In most cases, and preferably, the first notification to an Owner of a violation will be by means of a "FRIENDLY REMINDER" letter or phone call followed by a letter to confirm the discussion. The Owner will be asked to remedy or correct the condition or activity, as appropriate. The Association Manager will issue the letter. At the Board's discretion, it may bypass the "Friendly Reminder" letter stage and begin the process with the "NOTICE OF VIOLATION."

### III. NOTICE OF VIOLATION

At the Board's discretion, it may bypass the "Friendly Reminder" letter stage and begin the process with a "NOTICE OF VIOLATION" **OR**:

In the event compliance is not forthcoming following a reasonable period stated in the "FRIENDLY REMINDER" letter, a written "NOTICE OF VIOLATION" together with an additional request to correct or remedy the alleged violation(s) shall be sent to the Owner of the Lot and shall specify the following relating to the violation:

- a) The provision of the community documents that has/have allegedly been violated.
- b) The date(s) of the alleged violation(s), and the date(s) observed.
- c) The name of the person or persons who witnessed the violation(s)
- d) The process the Owner must follow to contest the notice, as described in Section III.

If the Owner is leasing or renting the home, the Association may furnish a copy of the Notice of Violation(s) to the Owner's tenant.

### IV. OWNER RESPONSE

In accordance with Arizona Revised Statute 33-1803(C), an Owner who receives a written "Notice of Violation" pertaining to an alleged violation(s) of the Governing Documents, may provide the Association with a written response by sending the response by certified mail within twenty-one (21) calendar days after the date of the Notice. Within ten (10) business days after receipt of the certified mail containing the response from the Owner, the Association shall respond to the Owner. The Association's response will confirm, retract or modify its position regarding the violation(s), depending upon the information provided by the Owner in the certified letter.

### V. DEFINITION - CONTINUING VIOLATION(S)

For each day a violation continues after a notice to cease and desist has been given by the Board of Directors to the Owner, the Board may consider each day a separate violation, also subject to a monetary penalty.

### VI. NOTICE OF HEARING

In the event the violation(s) continue(s) or if the same rule or provision of the Governing Documents is subsequently violated, the Association may send a "Notice of Hearing" letter (via Certified Mail). At the Board's discretion, it may bypass all prior stages of notification and begin the process with a "NOTICE OF HEARING." This letter shall contain the following:

- a) The nature of the alleged violation(s), the date(s) observed.
- b) The provision of the community documents that has/have allegedly been violated.
- c) The name of the person or persons who witnessed the violation(s)
- d) Time and Place of the Hearing, which shall be not less than ten (10) days from the date of the notice.
- e) An invitation for the Owner to attend the hearing and produce any statement, evidence, and witness(es) on his/her behalf.
- f) The proposed monetary penalty to be imposed, if any, including any attorney fees or other costs incurred by the Association.

- g) The process the Owner must follow to contest the notice.
- h) A statement that, while the Owner is afforded an opportunity to attend the hearing as per state statute, it is not a mandatory requirement; and that any evidence and testimony regarding the alleged violation will be reviewed at that time. The Owner will be further advised that the hearing will be held and conducted with or without the Owner's attendance.
- i) A statement that the hearing will be held in a closed session with the Board of Directors unless the Owner requests it be held in an open session, an opportunity as provided in the state statute.
- j) That the Owner may petition the violation via the Arizona Department of Real Estate

**VII. HEARING PROCEDURE**

This procedure will apply to all hearings:

- a) The hearing shall be held pursuant to the "Notice of Hearing."
- b) The Owner, if present, shall be afforded a reasonable opportunity to be heard.
- c) The Association shall present to the Owner all accumulated evidence, observations and any witness testimony, as appropriate.
- d) The Owner, if present, shall be provided the opportunity to review all evidence, and question any witness(es).
- e) Board members shall ask questions for clarification and/or to obtain additional facts, but shall not express any opinions on the violation(s) or render any decision(s).
- f) The Owner shall be asked for any final comment before the Board closes the hearing.
- g) The Owner shall be informed that a decision will be forthcoming in writing within ten (10) days.
- h) The Owner shall be dismissed, and the Board shall consider its decision.
- i) The minutes of the hearing shall contain a written statement of the results of the hearing.

**VIII. IMPOSITION OF MONETARY PENALTIES AND OTHER SANCTIONS**

The Board of Directors shall, under Executive Session, deliberate on the alleged violation solely on the basis of the evidence and testimony presented and reviewed at the hearing, together with the amount of the monetary penalty to be imposed, if any, based on:

- The seriousness of the violation.
- Whether this is the first violation or a continuing violation.
- Whether the type of offense poses a danger to property or any person.
- Any other extenuating circumstances and whether the Owner agrees in good faith to correct the violation within the time specified by the Board of Directors.
- Whether a determined monetary penalty is sufficient to obtain compliance, based on the facts.
- The Board of Directors may impose a monetary penalty in an amount as shown in the attached "Penalty Guidelines". After the Board of Directors determines the amount of the monetary penalty, if any, notice shall be sent to the Owner of the amount and its due date.

**IX. REQUEST FOR RECONSIDERATION**

If the Owner wishes to appeal the levying of a monetary penalty, the following shall apply:

- a) In order to schedule an appearance before the Board of Directors, the Owner must submit a written request to the Association within seven (7) days of receipt of notice of the Board's decision.
- b) The meeting shall be scheduled and the Owner notified of the date, time and location via Certified Mail.
- c) The meeting will be held in Executive Session, unless requested otherwise by the Owner, and the Owner shall be afforded a reasonable opportunity to be heard.
- d) At the conclusion of the meeting, the Owner shall be excused from the meeting and the Board of Directors shall issue a ruling on whether the decision stands, shall be modified or shall be rescinded.
- e) The Board of Directors shall send a written notice of its decision to the Owner.
- f) The ruling of the Board of Directors will be final.

**X. PENALTY GUIDELINES**

Monetary penalties for violations of the governing documents and/or rules and regulations of the Association may be as follows:

<b>First Violation</b>	<b>\$25.00</b>
<b>Second Violation</b> (of the same type or nature)	<b>\$50.00</b>
<b>Third Violation</b> (of the same type or nature)	<b>\$75.00</b>
<b>Each Violation</b> after the 3 <sup>rd</sup> (of the same type or nature)	<b>\$100.00</b>

Special one-time Violation - \$100.00 to \$200.00 for violations where a remedy/reversal is not possible - as determined by the Board.

After the aforementioned penalties have been assessed, an additional monetary penalty may be assessed for each additional day that the violation continues, or in the event the same violation is repeated within a specified time period.

**XI. PAYMENT OF MONETARY PENALTIES**

The Board of Directors shall advise the Owner that any monetary penalty, if imposed, shall be due and payable and will be added to the Owner's account balance.

**XII. SUPERSEDE PRIOR POLICIES**

This Resolution shall supersede any prior enforcement procedures and/or policies.

**APPROVED BY THE BOARD OF DIRECTORS ON JUNE 14, 2018**

  
Board President

  
Date