

#### **IV. COVENANT ENFORCEMENT POLICY**

The Owners of record of lots within the Subdivision and the Association Board of Directors are hereby designated as the only legal entities to enforce the above duly recorded Amended Protective Covenants of Rainbow Valley Subdivision, units 1-10 inclusive, Teller County, State of Colorado. The restrictions and protective covenants set forth herein are accepted by every Owner, grantee, purchaser, renter and user of Lots within the Subdivision, and they agree to conform to and observe these Covenants.

This Rule shall apply to any alleged violation ("Violation") of the Association's Declaration, Articles of Incorporation, Bylaws and Policies, Procedures, Rules and Regulations (collectively the "Governing Documents"), as amended, except and excluding non-payment of assessments or other sums.

The Lot Owner is responsible for the action of any person or persons renting, leasing or otherwise occupying their property.

##### **1. Complaints.**

- a. Initial complaints of any Violation may be presented to the Board in writing or orally by any person before or at any meeting, and shall be investigated by an Investigator such as the Managing Agent or Board Member(s) or committee who has been designated to investigate such complaint ("the Investigator").
- b. It is recommended that anyone observing a Violation of the Governing Documents should notify the Association in writing or Email, and include the name and address (if known) of the person(s) in violation (the "Alleged Violator"), and the date, time, and location of the Violation. Notification should include name, address and phone number of the reporting party. Reports will be handled confidentially (within reason or unless disclosure is legally required), but the Board may require such information in order to validate any necessary legal actions.
- c. The Investigator shall, in its discretion, determine whether or not the complaint shows cause for further proceedings and is empowered to send courtesy letters concerning reported Violations and/or warnings of possible sanctions, fines and/or suspension of privileges, and/or issue a 'cease and desist' order, to the Alleged Violator. If the Investigator is unable to convince the Alleged Violator that the offending practice should be ceased, then the Investigator shall make a formal report to the Board.

The Board shall not decide the validity of the complaint at such meeting, but rather shall notify the Owner and shall set the matter for hearing at a later date (the "Notice").

2. **Notice and Scheduling Hearings.**

- a. The Board, or its officers or agents, should send the Notice by personal delivery, regular mail and/or certified U.S. Mail, return receipt requested, to the Owner, and a copy may be sent to the Owner and/or the Alleged Violator (if the name has been furnished to the Association), such as a tenant, contractor, guest or family member of the Owner. The Notice shall be deemed received by the Owner and/or the Alleged Violator three (3) days after mailing. The Notice may be sent to the property if the Owner has failed to register a current mailing address. The Notice may also be sent to the complaining party.
- b. The Notice should advise the Owner and/or the Alleged Violator that if the Owner desires a hearing to challenge or contest any Violations and/or the sanctions, fines and/or suspension of privileges, and/or to discuss any mitigating circumstances, the Owner and/or the Alleged Violator must request such hearing, in writing, to the Board, within five (5) days of receipt of the Notice. If a request for hearing is made, the hearing shall take place at the next regularly scheduled meeting of the Board of Directors. The request for hearing or other written response from the Owner and/or the Alleged Violator must describe the basis for challenging the alleged Violation or the mitigating circumstances.
- c. At the hearing, the Owner and/or the Alleged Violator has the right to have the matter heard by the Board Members, except for the Investigator or any Board Member who would receive a greater benefit or detriment from the outcome of a hearing than the general membership of the Association who will recuse themselves from acting as Members of the Board during any hearing. However, it shall be conclusively presumed that all of the Board Members, except the Investigator, are impartial decision makers.
- d. Any written statement from the Owner and/or the Alleged Violator must be received by the Board at least twenty-four (24) hours before the hearing, and must be served by personal delivery or US Mail, postage prepaid, addressed to the

Association in care of its registered agent, as maintained with the Colorado Secretary of State, or such other address as the parties may be advised of in writing. Any notice personally delivered shall be deemed received on the date of delivery, and any notice mailed shall be deemed received on the fifth day following the date of mailing. If the Owner and/or the Alleged Violator plans to be represented by legal counsel, the Owner and/or the Alleged Violator must give the Board at least five (5) days' prior written notice. If the time requirements set forth above conflict or the Board deems inappropriate in its discretion, the hearing may be re-scheduled to the next regularly scheduled meeting of the Board of Directors. Any hearing or request for hearing shall not stay the other enforcement procedures described below, unless otherwise directed by the Board of Directors.

3. **Hearing.**

- a. The primary purpose of hearings before the Board is to resolve Covenant enforcement matters as early as possible, without the expense of litigation. As a result, any Owner or alleged violator who appears at a hearing is encouraged to discuss resolution in lieu of or in addition to the hearing. If the Board believes that the Owner/Violator is acting in good faith and that there is a realistic chance of resolution, the Board may reschedule the hearing and attempt to use the remainder of the time that was originally scheduled for a hearing for the alternative dispute resolution described in the Association's Rules. However, if at any time the Board, in its sole judgment, believes that delay will harm the interests of the Association, it may proceed with the hearing.
- b. Hearings shall be conducted by Board Members, except the Investigator. As a result, any Board Members who would receive a greater benefit or detriment from the outcome of a hearing than the general membership of the Association shall recuse themselves from acting as Members of the Board during any hearing. If disqualification of any Board Member(s) results in an even number of remaining Board Members eligible to hear a case, the Presiding Officer may appoint an impartial Association Member, in good standing, to serve as a voting Member of the Board for that hearing.
- c. Hearings shall be held in executive session because they may involve privacy and/or possible litigation issues. The Board may

exclude any person other than the Owner or Alleged Violator and witnesses, when testifying.

- d. At the hearing, the Board may consider any written or oral information produced by the Owner, the Alleged Violator or other interested party. Any legal or statutory rule of evidence or procedure shall not apply to the hearing, and the Board may restrict testimony or proceed in any manner or order which it deems appropriate in its discretion. Generally, any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence shall be sufficient in itself to support a finding. The Board may tape record or otherwise transcribe the hearing. The Board may proceed with the hearing even if the Owner fails to appear or refuses to participate or to submit information. The Owner and/or the Alleged Violator may be represented by legal counsel so long as said Owner and/or the Alleged Violator gives the Board at least five (5) days' prior written notice, in which case the Board's attorney may be present as well. Any participant may question any witnesses and examine any documents presented at the hearing.
- e. After hearing any information, witnesses, or documents presented at the hearing, the Board's decision shall be made by majority vote of the Board Members present. If requested by the Owner and/or the Alleged Violator, the Board will furnish a brief summary of the decision and the sanction, if any, which may be sent by regular mail to the Owner and, if requested or the Board deems it necessary, to the Owner and/or the Alleged Violator. The Board may also issue and record a Notice of Finding of Violation with the County Clerk and Recorder, and release same upon satisfactory compliance with the Governing Documents.

4. **Extent of Violations.**

Each incident or each day of a continuing Violation shall be considered a separate violation for which any maximum fine may be imposed. For example, each day during which a pet or a sign is permitted to remain is a separate Violation. The Board may in its discretion impose increased fines for repeated or intentional Violations.

5. **Parties to Violations.**

Owners shall be responsible for Violations committed by their contractors, guests, family members, and tenants, for example, pets kept by tenants or signs placed by real estate agents. The Board may proceed against both the Owner and the Alleged Violator, simultaneously or separately, and actions against one shall not bar action against the other. The Board may contact the police, any regulatory or licensing authorities or other third parties regarding the alleged Violation, but any action or decision by those parties shall not bar the Board from proceeding.

6. **Fines and Sanctions.**

a. Any Violation of the Governing Documents will subject the Owner and/or the Alleged Violator to a reasonable fine assessment imposed by the Association as follows:

- First time or minor Violations: \$50
- Repeated minor Violations: between \$50 - \$100
- Repeated or flagrant Violations: between \$50 - \$250
- Open fire Violation: up to \$2,000

In the event of a continuing Violation, each day is a separate Violation and a daily fine may be levied, but only if the Association's agent performs a daily inspection to verify the Violation is continuing.

b. This schedule is not intended to cover all possible Violations, and there are instances where the amount of fines may vary depending on the circumstances. The amount of the fines are intended to bear a reasonable relationship to the actual harm that is being caused; the potential risk of loss to the Association if compliance does not take place; the costs of investigative demand letters and hearings to ensure compliance; and the cost of remedial measures (if used).

c. Repeat offenses and/or repeat offenders will justify higher fines. Fines should also be commensurate with the time and effort of the various Board members in investigating and gathering evidence of Violations, sending demand letters and conducting hearings. The above schedule is (at most) an attempt to ensure uniformity for routine violations.

- d. Fines will be due and payable within thirty (30) days of the date of the imposed fine, and shall be considered delinquent after the due date. A delinquent fine will result in a lien being filed on the property for nonpayment and will bear interest at fifteen percent (15%) per annum, calculated from the date of the fine, as well as late fees and legal fees.
- e. Any fine shall be both a personal obligation of the Owner and/or the Alleged Violator or both and shall also be an assessment creating a lien which may be recorded against the property and may be foreclosed as provided in the Declaration. The Board may notify any lender and credit agency of such obligation and lien. Additionally, the Board may bring legal action to enforce the violated provision and to recover the fine.
- f. Any Violation shall entitle the Board to recover from the Owner and/or the Alleged Violator or both, reasonable attorney fees, court costs, interest, and any other collection expenses, regardless of whether litigation is instituted or is successfully concluded. The Board may seek to recover such fees and costs by all legal remedies, including without limitation, charging such fees and costs to the Owner's account with the Association.
- g. The Board, in its discretion, may waive fines, attorney fees, court costs, interest and other collection expenses, if, in its reasonable discretion, such waiver is appropriate under the circumstances. Additionally, the Board may consider a waiver of the entire fine, or any portion thereof, upon the Owner and/or the Alleged Violator coming into compliance with the Declaration, Bylaws or Rules.
- h. The Board reserves the right to fine for first Violations of Rules that involve health and safety issues and other Violations where a warning may not be deemed necessary by the Board in its reasonable discretion. Additionally, upon prior written notice, the Board reserves the right to levy fines in excess of the above schedule, if the Board determines that the fines set forth in the schedule are not likely to provide effective incentives to induce compliance.
- i. Payment of an assessed fine does not relieve the Owner and/or the Alleged Violator from the responsibility of correcting the Violation.

7. **Other Enforcement Actions.**

If the actions described above do not cure the default, or in the event of emergency, health or safety reasons, the Association will thereafter have the right (but not the obligation) to undertake whatever actions are reasonably necessary to remedy such Violation, including:

- a. The right to access the real property, but not enter any Owner's personal residence or structures erected on such real property for the purpose of correcting the default, in which case the party performing such action shall not be liable for any losses, costs or damages to any Owner of any Lot on account of its performance of such action except for any such loss, cost or damage caused by the party's gross negligence or willful misconduct. Said right of access shall include, but is not limited to, the right to, remove any nuisance or otherwise undertake action to cure the breach or otherwise bring the property into compliance; and/or
- b. The right to file an action in any court of competent jurisdiction to cure Violations of the Governing Documents or to obtain injunctive relief against any Owner and/or the Alleged Violator, any of their agents, contractors or assigns, enjoining any activity which is in violation of the Governing Documents. If any such action is brought by the Association, it shall not be required to post any bond as a condition to the granting of any injunctive relief (including a preliminary injunction or temporary restraining order), nor shall the Association's right to such injunctive relief be affected by arbitration provisions in any contract executed by such Owner, tenant or their agents.

8. **Other Remedies for Failure to Pay Fines/Charges.**

In the event the Association elects to remedy Violations or take other action pursuant to Sections 3 through 7 above, the Association will submit all charges incurred for same to the Owner or persons responsible for the property upon which or for whose benefit such costs were incurred. If the Association's fines or costs have not been paid after expiration of thirty (30) days after the date they become due, the Association may thereafter, in addition to all other remedies:

- a. deny rights to use the Association facilities (such as the recreational areas), and/or voting rights, or other rights in the Association (including the right to inspect records and documents); and/or

b. the aggrieved owner of record or the Association Board of Directors shall prepare a written notice of lien setting forth the amount of unpaid indebtedness, the name of the Owner-Violator, and legal description of his real property interest. Such notice shall be signed by the aggrieved owner or President of the Association and recorded in the office of the Clerk and Recorder of Teller County, Colorado. Such lien for the common expenses shall attach from the date of the injunction. In any such notice of lien proceeding, the Owner-Violator shall be required to pay the costs, expenses, and the attorney fees of the aggrieved Owner or the Association incurred in filing the fees of the aggrieved Owner or Association shall be paid by the Owner-Violator. The lien shall be subordinate to the lien of any deed of trust or mortgage as provided by section above.

9. **Responsibility.**

Owner(s) shall be responsible for Violations committed by their guests, contractors, family members, agents or tenants. The Board may proceed against the Owner, the individual violating the Governing Documents, or both, and may suspend the rights of said Owner(s) for so long as a Violation continues or the fines or costs assessed pursuant to the Governing Documents remain unpaid.

10. **Rights.**

All rights and remedies set forth hereinabove shall be in addition to, and not in lieu of, any other rights and remedies which any Owner and/or the Alleged Violator may have to personally enforce the Governing Documents. All such rights and remedies shall be cumulative, and the exercise of any one or more of such rights and remedies shall not be deemed an election precluding the exercise of any of the others.

11. **Substantial Compliance.**

Technical irregularities or defects in the complaint, Notice or other compliance with this Rule shall not invalidate the proceedings or any fine or sanction imposed. This Rule shall be liberally construed to accomplish prompt, effective enforcement of the Association's Declaration, Articles of Incorporation, Bylaws and Rules.



12. **Board Resolves Questions of Construction.**

If any doubt or questions shall arise concerning the true intent or meaning of any of the Governing Documents, the Board shall determine the proper construction of the provision in question, and shall set forth in a written statement the meaning, effect and application of the provision. These determinations will thereafter be binding on all parties so long as it is not arbitrary or capricious, and they may be filed for record with the Clerk and Recorder of Teller County.

**Adopted by the Board, this 4th day of August, 2018, effective immediately.**