

# HIGHLAND VIEW ESTATES HOMEOWNERS ASSOCIATION

## Fine & Due Process Policy — Revised March 1st, 2023

Pursuant to Article III, Section I(a) and Article VII, Section 1 of the Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") of Highland View Estates Homeowners Association (the "Association") and R.C.W. 64.38.020(11), the following written policy is adopted in order to further and foster compliance by homeowners with the provisions and requirements of the Declaration of Covenants, the Bylaws and Rules & Regulations (hereinafter collectively the "governing documents") of the Association. These rules are intended to provide additional incentive for compliance by owners who violate the requirements and provisions of the governing documents, not supplant or amend them, and in the event of an inconsistency or conflict between these Rules and the governing documents of the Association, the governing documents provisions will supersede and apply.

### **I. Schedule of Fines.**

- a. Pursuant to its authority under RCW 64.38.020(11) the Board of Directors for Highland View Estates Homeowners Association hereby adopts the following schedule of fines, which will be imposed according to the procedures in this Fine & Due Process Policy:
- b. Intermittent Violations. If the violation involves an intermittent offense or conduct, the Association may levy fines on a per same incident during a calendar year, basis as follows:
  - i First Violation: Warning letter to owner; no fine.
  - ii Second Violation: \$50 Fine
  - iii Third Violation: \$200 Subsequent Violations
  - iv Fourth and Final Violation \$250
- c. Continuing Violations: If an owner violates any provision(s) of the governing documents and does not comply after reasonable notice and within the deadline given by the Association, fines may be imposed and accrue at the rate of \$10 per day until complete compliance occurs or is accomplished. Such fines may be assessed by the Association against any homeowner and his/her lot, starting immediately after the notice deadline period expires without the complete and total correction of the violation(s) by the owner within that period.

### **II. Complaint and Investigation by Board of Directors.**

- a. Owner Resolution. In the event of a known or suspected violation, the witness/offended party is encouraged to first talk with the offending owner/occupant and request correction.
- b. Complaint to Board of Directors. If the offense continues, or if verbal satisfaction is not achieved as a result of the conversation, a written complaint should be submitted to the Board of Directors or the Community Association Manager. The written complaint needs to document the offense; explain the alleged violation in detail; the date/time/location the violation occurred; the lot owner's name and address, if known, as well as the name of the tenant/guest/etc. who committed the violation; and the names of any other witnesses who can substantiate the violation. For pet violations, please also be sure to include a description of the pet.
- c. Investigation: When a possible violation is reported to or otherwise becomes known to the Association, it will be investigated by the Board or its designated representative(s), and a determination made as to whether a violation has actually occurred.

### **III. Notice and Opportunity to Be Heard.**

- a. **First Notice of Violation (Warning Letter):** If the Board of Directors determines that a violation occurred, a written warning regarding the violation will be sent or delivered to the offending homeowner giving him/her a deadline date for compliance. The deadline given in such notice letters will be a reasonable time period within which to correct the violation and fully comply. In each case or matter, the Board will consider the nature of the violation, the circumstances of the owner and the property, and what it will take to correct the noncompliance in order to determine a reasonable time period deadline to give the owner to comply.
- b. **Intermittent Violations**
  - i. **Second Notice of Violation:** If, after the warning letter, an intermittent violation occurs a second time in a 12 month period, the Board of Directors or Community Association Manager may send a Second Notice of Violation. This Second Notice should provide a deadline for the owner to bring the lot into compliance or to request a hearing in front of the Board of Directors regarding the violation. The Second Notice of Violation should warn that a fine of \$50 may be imposed if the owner does not correct the violation or request a hearing by the deadline.
  - ii. **Third Notice of Violation:** If the intermittent violation occurs a third time in a 12 month period, the Board of Directors or Community Association Manager may send a Third Notice of Violation. This Third Notice should provide a deadline for the owner to bring the lot into compliance. The Third Notice of Violation should warn that a fine of \$200 may be imposed if the owner does not correct the violation.
- c. **Continuing Violations**
  - i. **Notice of Continuing Violation.** If, after the Notice of First Violation is sent, the offending homeowner does not cure the violation by the deadline in the first notice, the Board of Directors or the Community Association Manager may send a Notice of Continuing Violation. The Notice of Continuing Violation shall provide another deadline for the owner to cure the violation or to request a hearing in front of the Board of Directors regarding the violation. The letter shall also state that if the violation is not corrected and no hearing is requested by the deadline, fines of \$10/day will begin to be imposed against the owner and his/her lot and will continue until the violations are corrected and the lot is brought into full compliance with the Board of Directors.
- d. **Notice of Intervention**
  - i. If, after the Notice of Continuing Violation is sent, the offending homeowner does not cure the violation and fines have accrued in excess of \$1000, the Board of Directors or The Community Association Manager may elect to send a Notice of Intervention. The Notice of Intervention shall provide another deadline for the owner to cure the violation. The letter shall also state that if the violation is not corrected that a licensed and bonded business will be hired on behalf of the owner to correct the Continuing Violation and all costs will be levied as fines against the owner. Once the violation is corrected the daily fines for the violation will cease. All fines assessed prior to the violation being corrected will remain on the homeowner's account. If necessary, the Association's legal counsel may be engaged as part of corrective action by the Association, and the

owner will be responsible for any attorney's fees and costs associated with securing compliance.

#### **IV. Request for Hearing.**

Introduction. Any homeowner found by the Board to be in violation of governing documents provisions or requirements may request a hearing to offer a defense to the violation or to explain extenuating circumstances regarding the violation prior to the imposition of fines.

- a. Deadline for Homeowner Requesting a Hearing/Waiver of Hearing Right if Untimely Request. Each letter sent by the Association to the owner with a final deadline for compliance and a notice that fines will commence shall also specify the following information:
  - i he/she has the right to request a hearing solely for the purpose of disputing the validity or basis of being fined;
  - ii a reasonable deadline by which the homeowner must notify the Board in writing that he/she requests a hearing;
  - iii If the homeowner does not timely give written notice to the Board that he/she is requesting a hearing, the homeowner waives the right to a hearing.
- b. The deadline for requesting a hearing and the waiver of the right to hearing for failure to timely meet the deadline is intended to bring a definitive closure to the hearing request period, so that a homeowner cannot unreasonably obstruct or delay implementation or collection of the imposed fines by requesting a hearing after collection or enforcement efforts begin.
- c. Request of Hearing. The homeowner must complete a written Request for Hearing which shall be mailed or delivered to the Association. The hearing request must contain the following:
  - i Homeowner's name and address;
  - ii Homeowner's reasons, basis and defense for the hearing;
  - iii A copy of all supporting documentation;
  - iv The name of any attending witnesses or other collaborating guests;
  - v The homeowner's signature and date of the Request for Hearing.
- d. Once a Request for Hearing is received, no fines will be assessed pending the outcome of the Hearing.

#### **V. Hearing Procedures.**

- a. The homeowner will be sent confirmation by the Association of its receipt of the Request for Hearing.
- b. The Board will appoint and assemble a minimum of three (3) (or more at the Board's discretion) current members of the Association and/or the Association's Board of Directors, or appoint and name a representative designated by the Board to act as a Review Board (the "Review Board") within seven (7) calendar days following receipt of a written Request for Hearing complying with the information requirements set forth above.
- c. No later than ten (10) calendar days following the formation of the Review Board, the Review Board shall mail or deliver notice to the appellant owner of a hearing date, which notice will provide the date, time, and location of the hearing, which is to be determined by the Review Board.

- d. The Review Board will permit the appealing homeowner up to thirty minutes to explain the circumstances of the matter and provide grounds as to why the fine should be waived, reduced or cancelled.
- e. At the conclusion of the presentation, the hearing will adjourn, and the Review Board will review the circumstances of the Request for Hearing as presented.
- f. Within seven (7) calendar days of the hearing, the Review Board will mail or deliver written notice to the homeowner of the Review Board's decision.
- g. If the Review Board finds in favor of the homeowner, it will advise the homeowner as to whether the violation and/or the fines originally imposed are reduced, modified, or waived. Any adjustment(s) shall reflect on the homeowner's account the following month.
- h. If the Review Board determines after the Hearing that a violation occurred and fines are appropriate, fines will begin three (3) days following written notification to the Owner of the Review Board's final decision.
- i. If the homeowner does not attend the scheduled hearing the Review Board will mail or deliver written notice of their decision to the homeowner based on the evidence and information available.

## **VI. Costs of Enforcement.**

Pursuant to Article VII, Section I of the Declaration, the Association may charge the cost of preventing or abating a violation of the governing documents to the offending Owner and his/her Lot, including reasonable attorneys' fees and costs. These costs may be assessed to an Owner whether or not a lawsuit or other legal action is commenced by the Association.

## **VII. Judicial Enforcement.**

- a. Notwithstanding anything to the contrary herein, in the Board's discretion, legal action may be taken against the violating homeowner at any time after a compliance deadline is given to owner, and nothing in these Rules is intended to waive or otherwise modify the Association's legal right(s) to take other enforcement measures in order to secure or achieve compliance.
- b. Fines may continue to be assessed while the legal action is in process, if the homeowner continues to violate the requirements of the governing documents.
- c. All attorneys' fees and costs shall be awarded to the prevailing party and recoverable from the losing party in any action, lawsuit or other proceeding involving the enforcement of the governing documents.

## **VIII. Collection of Fines**

- a. All violation fines imposed by the Association are defined as assessments and are collectable in the same manner as all other assessments under the governing documents and the applicable laws.
- b. Any fines assessed against an owner and his/her Lot which remain unpaid for 15 days shall automatically constitute a lien on the Lot and all its improvements, and may be handled and foreclosed upon in the same fashion as if it were a lien for unpaid assessments under the Association's governing documents and the laws of the State of Washington. The Association may file a formal lien with the county in order to further protect its interests regarding the unpaid fine(s). The amount of the lien shall include all unpaid assessments, violation fines, late fees, interest, attorneys' fees, and all costs and expenses, incurred by the Association in the imposition and collection of such unpaid fine(s).

## **IX. Rule Enforceability**

If any portion of this rule is determined to be legally unenforceable, it shall not negate the enforceability of the remaining portions of the rule.

Adopted: April 27th, 2016. Effective: June 1<sup>st</sup>, 2016.

Revised: March 1<sup>st</sup> 2023.