

## **POLICY LETTER E**

### **Covenant Enforcement Policy**

This Rule shall apply to any alleged violation (“violation”) of the Declaration, the Articles of Incorporation, the Bylaws and the Policies, Procedures, Rules and Regulations of the Sylvan Meadows Property Owners Association (the “Association”), except and excluding non-payment of assessments or other sums, which is governed by Policy Letter “A” of the policies of the Association.

#### **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 “impartial decision maker” (or “IMP”) such as a Director who will not receive a greater benefit or detriment from the outcome of an investigation than the general membership of the Association.
- (b) It is recommended anyone observing a violation of these Covenants should notify the Association in writing or Email, and include the name and address (if known) of the person(s) in violation (the “alleged rule 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 IMP 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 rule violator. If the IMP is unable to convince the alleged rule violator that the offending practice should be ceased, then the IMP 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 Member 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, shall serve the Notice by personal delivery, regular mail and/or certified U.S. Mail, return receipt requested, to the Member, and a copy may be sent to the alleged violator (if the name has been furnished to the Association), such as a tenant, contractor, guest or family member of the Member (the owner of the property). The

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Notice shall be deemed received by the Member three (3) days after mailing. The Notice may be sent to the address of record (the address shown on the Deed) if the Member has failed to register a current mailing address. The Notice may also be sent to the complaining party.

- (b) The hearing shall take place at the next regularly scheduled meeting of the Board of Directors, which is posted at <https://sylvanmeadowspoa.com>, unless the Notice indicates a time and place of the hearing, and the Notice may indicate any other information regarding the violation which the Board deems appropriate in its discretion.
- (c) At the hearing, the Member has the right to have the matter heard by an IMP, such that any Director who would receive a greater benefit or detriment from the outcome of a hearing than the general membership of the Association will recuse themselves from acting as decision makers during any hearing. However, if that advisement is included in the Notice, the Member must furnish a written response describing the basis for asserting any Directors would not be an IMP.
- (d) Any written statement from the Member must be received by the Board at least seven (7) days 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 Member plans to be represented by legal counsel, the Member must give the Board at least 15 days prior written notice. If the time requirements set forth above conflict or the Board deems appropriate 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 the owner/violator is acting good faith and 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 Policy Letter D. 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) Directors who are IMPs shall conduct hearings. As a result, any Directors 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 decision makers during any hearing. If disqualification of any Directors results in an even number of remaining Directors eligible to hear a case, the Presiding Officer may appoint an impartial Member in good standing to serve as a voting Director 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 Member, 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 Member fails to appear or refuses to participate or to submit information. Legal counsel may represent the Member so long as said owner gives the Board at least 15 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 Directors present. If requested by the Member, the Board will furnish a brief summary of the decision and the sanction, if any, which may be sent by regular mail to the Member and, if requested or the Board deems it necessary, to the alleged violator. The Board may also issue and record a Notice of Finding of Violation with the County Clerk and Recorder, and release the 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. The Board may in its discretion impose increased fines for repeated or intentional violations.

## 5. Parties to Violations

Owners of property located within the Association 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 are the responsibility of the Owners. 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 to a reasonable fine assessment imposed by the Association. Fines for certain specific violations are set forth in the Rules and Regulations. In cases where no specific fine is listed, the fines will generally be as follows:
- first time or minor violations between \$25 and \$75;
  - repeated minor violations between \$50 and \$100; and
  - repeated or flagrant violations between \$100 and \$500.

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.

[Total fines may not exceed \$1,000.00 for any finding of violation.]

- (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 Directors in investigating and gathering evidence of violations, sending demand letters and conducting hearings. The above schedule is (at most) an attempt in order 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 eight percent (8%) 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 Member or the violator or both and shall also be an assessment creating a lien which may be recorded against the property that is subject to the lien (the "Lot") 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 Member or violator or both, its reasonable attorneys 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 Member'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 condition waiver of the entire fine, or any portion thereof, upon the 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 the fines set forth in the schedule is not likely to provide effective incentives to induce compliance.
- (i) Payment of an assessed fine does not relieve the violator from the responsibility of correcting the violation.
- (j) Any member who owes the association money for fines, legal fees, late dues, or any other just debt may be categorized by the Board as a "member not in good standing" and will thereby lose privileges granted to members in "good standing" such as voting on POA matters.

## **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 Covenant or these Rules, 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 El Paso County.

Adopted this 25<sup>th</sup> day of Sep, 2019, by the Board of Directors.

Signed: Joe Arbuckle, Board President

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