

# CIVANO 1: NEIGHBORHOOD 1 ASSOCIATION

## RESOLUTION 20-01

### VIOLATION ENFORCEMENT PROCEDURE

(Replaces Resolution 12-01A, dated 2/21/2012) &

(Replaces Resolution 09-03, dated 6/2/2009)

**WHEREAS**, Article 11, Section 11.1 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Civano 1: Neighborhood 1 (the CC&Rs) grants the Association the right and power necessary for the reasonable administration of the affairs of the Association in order to effectuate all of the objectives and purposes of the Association and which are contained in the Specific Plan; and,

**WHEREAS**, Article 11, Section 11.2 of the CC&Rs empowers the Association's Board of Directors to adopt, amend and repeal rules and regulations pertaining to all aspects of the Association's rights, activities and duties, and further states that the Association rules are enforceable in the same manner as the CC&Rs; and,

**WHEREAS**, Article 11, Section 11.3 of the CC&Rs empowers the Association to enforce the provision of the CC&Rs; and,

**WHEREAS**, the Board of Directors wishes to revise its procedures for the enforcement of violations of the CC&Rs and Association rules;

**NOW THEREFORE**, the following procedures shall be applicable to such enforcement:

#### I. Community Inspections

- a. The Managing Agent (HOA Staff) will conduct at least two (2) full inspections of the community each month, varying the days and times of inspections, and shall note any lots that are in violation of any section of the CC&Rs or Association rules.
- b. In the event a Resident or the Chair of the Design Review Committee reports an observance of a violation to the managing agent, the managing agent may elect to inspect the observed violation on the next scheduled community inspection.
  - i. If it is determined that the issue noted by the Resident or the Chair of the Design Review Committee is not a violation the Association Manager will respond in writing to the party who reported it with that information.

#### II. Courtesy Notice (Letter #1)

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 the CC&Rs or Association rules. In most cases, and preferably, the first notification to an Owner of a violation of the CC&R's or Rules and Regulations may be by means of a Courtesy Notice letter. The Owner will be asked to remedy or correct the condition or activity within two (2) weeks. At the Association's discretion, this "Courtesy Notice" (Letter #1) stage may be by-passed and may proceed directly to the action in

Section III, or by-pass directly to the action in Section V. The Courtesy Notice shall contain the following information:

- a. Description and location of the violation with a photo
- b. The date the violation was observed
- c. Action required
- d. Encourage the homeowner to call the HOA office for clarification

### **III. Notice of Violation (Letter #2)**

In the event compliance is not forthcoming following the period stated in the "Courtesy Notice" letter, a written "NOTICE OF VIOLATION" together with an additional request to correct or remedy the alleged violation(s) within twenty-one (21) days shall be sent to the Owner of the Lot and shall specify, in accordance with state statute 33-1803(D), the following relating to the violation:

- a. The provision of the community documents that has/have allegedly been violated.
- b. The date(s) the alleged violation(s) was/were 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, where the owner may attend the hearing, contest it in writing, and that the owner has an option to petition for an administrative hearing on the matter in the Department of Real Estate at the owner's cost.
- e. This letter shall also notify the homeowner that a fine will be levied if they do not correct the violation or respond in writing to the Board their desire to contest the violation within the specified timeframe in the notice.

At the Association's discretion, this "Notice of Violation" (Letter #2) letter stage may be bypassed and may proceed directly to the Notice of Violation Hearing action in Section V. 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 & Contesting the Violation**

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.

- a. **Request to be Heard.** The owner may request to be heard by the Board in Executive Session at their next regularly scheduled meeting unless they choose to be heard in a regular Board meeting.
- b. **Presentation to Show Just Cause.** At this meeting, the homeowner and/or their designated representative will be given and opportunity to present supporting documentation and testimony to show just cause why further enforcement action should not be authorized by the Association. Such action could include a resolution, levy of a monetary penalty, and/or referral of the matter to the Association's attorney.

- c. **Designated Representative.** The homeowner should include in their letter whether another person will be the owner's designated representative. A designated representative may speak on behalf of the homeowner at the meeting. The homeowner shall inform the manager of the name of the representative in writing but not less than two (2) days before the meeting date.

#### **V. Notice of Hearing (Letter #3)**

In the event the Association elects to by-pass either Section II or Section III above, and/or the violation(s) continue(s) past the period allowed in the "Notice of Violation", and/or is not resolved through the Owner Response period in Section IV above, the Association may send a "Notice of Hearing" letter. This letter shall contain the following:

- a. The nature of the alleged violation(s), and 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. That a monetary penalty may be imposed including any attorney fees or other costs that may be incurred by the Association.

*In the alternative, the Board may put the burden on the homeowner to request a hearing within a defined deadline. The Board may impose a fine without a hearing in the event the owner does not timely request a hearing.*

#### **VI. Hearing and Board Decision**

If present the homeowner or their designated representative shall be afforded a reasonable opportunity to be heard and present any information related to the violation. The Board will review any evidence, observations, and witness testimony. The Board may ask questions but will not express any opinions or render any decision. At the conclusion of the meeting, the attending homeowner or designated representative shall be excused from the meeting. Decisions and results will be mailed to the homeowner within 10-days of the meeting.

#### **VII. Definition – Continuing Violation(s)**

For each day that a violation continues after the deadline to remedy the violation has been provided to the Owner, it will be deemed a "continuing violation." Each additional day shall constitute a separate violation and may be subject to a monetary penalty each day, as determined by the Board.

#### **VIII. Imposition of Fine and any other Sanction**

- a. **Fines.** At the conclusion of the hearing, the Owner may be excused from the hearing and the Board of Directors shall deliberate on the amount of the fine to be imposed, if any, based on:
  - i. The seriousness of the violation(s),

- ii. Whether this is a first violation or a continuing violation(s)
- iii. Whether the type of offense poses a danger to property or any person
- iv. Any other extenuating circumstances and whether the Owner agrees in good faith to correct the violation(s) within the time specified by the Board of Directors.
- v. Whether the amount is sufficient to obtain compliance, based on the facts
- vi. Impact on property values
- vii. After the Board of Directors determines the amount of the fine, the Board of Directors shall send notice to the Owner of the amount of the fine and its due date.
- viii. The Board of Directors is empowered to impose a fine for each day that the violation(s) continues. SEE ATTACHMENT A – FINE SCHEDULE.
- ix. The attached Fines Guidelines are not binding. The Board of Directors may impose a fine in any reasonable amount, based on the application of the factors above in items i-viii.

b. **Costs.** Owners to whom certified mail notices are sent shall be assessed the management company's charge to the Association for the mailings.

**IX. Payment and collection of monetary penalties**

The Board shall advise the homeowner that any fine which is not paid within thirty (30) days of its due date is delinquent and subject to late fees and interest I the same as any other assessment, subject to applicable Arizona law.

**X. Effective date**

The effective date of this Resolution shall be October 1, 2022, and shall supersede any prior enforcement procedures and/or policies.

DATED this 22<sup>nd</sup> day of July 2022

CIVANO 1: NEIGHBORHOOD 1 ASSOCIATION  
An Arizona non-profit corporation

By: Wendy E. Walker  
Its President

ATTEST:

Rob J. Snell  
Board Director

**ATTACHMENT A - FINES GUIDELINES**

1. No fine shall be assessed until the Member who has committed a violation has been given due written notice and an opportunity for a hearing.
2. Presumptive fines are as follows:

a. Parking:	\$50
b. Weeds:	\$50
c. Trash Cans:	\$50
d. Dog Off-Leash/Pet Infractions:	\$250
e. Short-Term Rental Violations:	\$250
f. Unapproved Architectural Modifications	\$250
g. Duty of Maintenance:	\$100
3. Monetary fines for other violation(s) of the governing documents and/or rules and regulations of the Association may be as follows:

a. First violation	\$50
b. Second violation (of the same nature)	\$100
c. Third violation (of the same nature)	\$200
d. Each violation after the third (of the same nature)	\$300
e. Daily Fines	As determined by the Board
4. An additional fine that accrues each day may be assessed after the aforementioned fines have been assessed if the violation is a continuing one. (Example: A Homeowner installs an improvement without ARC approval. A first violation fine of \$250 is assessed. If the violation continues uncorrected, an additional fine in a reasonable amount would be assessed for each day until the violation ceases. The Member ultimately corrects the violation. The Member installs another improvement without DRC approval. A second violation fine of \$250 is assessed. If the violation continues uncorrected, an additional daily fine would be imposed until the violation ceases).
5. The amounts of the: 1) presumptive fines above, 2) other fines, 3) daily fines, and 4) increasing fines of similar violations are mere guidelines. The Board shall have the specific authority to deviate from these guidelines by applying the factors in Section VIII(a) Fines.
6. The Board may impose non-monetary penalties in lieu of or in addition to the fines above including placing violation stickers on wrongfully parked vehicles and/or towing wrongfully parked vehicles.
7. It is the obligation of the Member to advise the Association in writing that the violation has ceased.