

AMEND: Enforcement Policy/Grievance Policy

This rewrite of the policy was initiated by two factors:

1. There were State Law changes that needed to be integrated into the existing Enforcement Policy.
2. It was observed by Board Members that a solid Grievance Policy and Procedure was needed.

The enforcement process and the grievance process are brought together in this policy because they are intrinsically connected and both deal with Non-Compliance issues. After a non-compliance is observed and reported, there will automatically be an “aggrieved party” and an alleged “offender”.

In our community there are two common instances when there will be an “aggrieved party” and an “alleged offender”.

1. The Association (aggrieved party) contacts an Owner (alleged offender) about a non-compliance issue (usually an alleged violation of rules) that the Owner is allegedly committing.
2. An Owner (aggrieved party) contacts the Association (alleged offender) about a non-compliance issue (usually an alleged violation of Bylaws, CCRs, or State Laws) that the Association is allegedly committing.

This complete rewrite integrates **A.R.S. 33-1242** and **CCR 6.7**, **CCR 10.7**, and **RULE Enforcement Policy**. The State Law is detailed and our CCRs included additional details that we needed to follow. Making sure everything was followed and integrated was quite a challenge. 😊

The Committee recommends that Rule Enforcement Policy be replaced with the Non-Compliance Policy and Procedures.

Non-Compliance Policy and Procedures

The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Condominium Documents. (CCR 10.1)

A condition of non-compliance (violation) of the Governing Documents may be observed by either the association or unit owner. The Association or Unit Owner has the right to question the alleged non-compliance. If the Association or Unit Owner objects to the answer given, both have the right to enforce the alleged non-compliance through a grievance process.

We must follow our Governing Documents as well as Arizona State Law for this process. Since the Association is managed by a volunteer board, it is important to adhere to an efficient defined process in order to resolve the grievance in a reasonable timeframe.

During all steps of the grievance process it is expected that participants interact with each other in a civil and courteous manner. Abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at participants will not be tolerated.

Regarding Board actions (especially volunteer Boards), in addition to the Governing Documents the Board is covered by a variety of State Laws. One of these, often called the "Business Judgement Rule", is *A.R.S. 10-830. General standards of conduct for directors*. Basically, this states that Board Members have a certain immunity from liability as long as their duties are performed as follows:

- In good faith.
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- In a manner the director reasonably believes to be in the best interests of the corporation.

In discharging their duties, a Board Member is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by any of the following:

- One or more officers or employees of the corporation whom the director reasonably believes are reliable and competent in the matters presented.
- Legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence.
- A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

1. Association Notifies Owner of Alleged Non-Compliance Procedure

A. Information and Observation

The Association may observe a condition of non-compliance or that condition may be brought to the attention of the Association by Staff, Board, Committees, or Owners. The Association will verify that there is a condition of non-compliance.

B. First Notice of Non-Compliance.

Upon verification of a non-compliance issue, the Office will deliver a *First Notice of Non-Compliance*, by mail, email, or in-person, to the Owner of the unit with the issue. This notice must include:

- The provision of the governing documents that has allegedly been violated.
- The date(s) of the violation or the date(s) the violation was observed.
- Action needed for compliance and date for completion (at least ten (10) days).
- Owner may appeal in writing within twenty-one (21) days of this notice.
- Inform that State law says “may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice.”

C. Owners Response.

The Owner may respond by:

- Stating in writing that the Issue has been corrected (this must be written and delivered by email, mail, or in-person). The Association will verify. No further action needed. Thank you. **OR**
- Stating that the Issue will be corrected by specific date (this must be written and delivered by email, mail, or in-person). Owner must notify the Office by the due date to confirm that Issue has been corrected or that more time is needed. If Issue is not corrected in an agreed timeframe, process may continue to move to *D. Second Notice of Non-Compliance.* **OR**
- Stating that the Issue will not be corrected at this time. Process may move to *D. Second Notice of Non-Compliance.* **OR**
- If there is no response and the Issue is continuing or reoccurring process will automatically move to *D. Second Notice of Non-Compliance.*

D. Second Notice of Non-Compliance.

Within ten (10) days of receiving the Owner’s certified mail response or twenty-one calendar days after the date of the First Notice of Non-Compliance, the Office , with assistance from the Board, will send the *Second Notice of Non-Compliance* which must include:

- The provision of the Governing Documents that has allegedly been violated.
- The date of the violation or the date the violation was observed.
- The first and last name of the person or persons who observed the violation.
- Action needed for compliance and date for completion.
- Proposed fines or sanctions including information on continuing or reoccurring non-compliance issues.
- A Hearing date and invitation for owner to attend. (at least ten (10) days from notice). The Hearing will allow the Owner to provide specific reasons and produce any statement, evidence and witnesses on his or her behalf.
- The Process for appealing using the Arizona Homeowners Association Dispute Process (<https://azre.gov/consumers/hoa>). The Owner may appeal to state at any time.

E. Hearing

At a violation hearing before the Board, the Owner (or his/her designated representative) shall be permitted to present evidence and/or witnesses on his or her behalf. If the Owner wishes to present personal, health, or financial information for consideration at the hearing, the Owner may make a written request to the Association that the hearing be held in executive session.

At the conclusion of the hearing, whether or not the Owner is present, the Board shall enter into executive session to determine whether to impose fines against the Owner and if so, the amount of such fines. In certain cases, the Board may pursue additional legal remedies or sanctions, if necessary.

At the direction of the Board the Office will send a *Notice of Action* to the Owner detailing the Board's decision. If it is determined the Owner is, in fact, in compliance, then no further action is needed. However, if the Owner is deemed to be in non-compliance, then the amount of fines to be assessed will be stated. The Owner shall be notified in writing of the Board's decision within fifteen (15) days of the violation hearing.

In accordance with Arizona law as well as the Governing Documents, the Board may impose reasonable fines against a Unit.

- The Association reserves the right to waive fines if the Unit Owner is making a good faith attempt to correct the violation(s).
- Each day that a violation continues after written notice to cease has been mailed shall be considered a separate violation and subject to the imposition of additional fines.
- Payment of a fine does not constitute a variance for the violation. All violations must be corrected regardless of the fines.
- Collection of delinquent fines may be enforced by seeking a personal judgment against the Unit Owner and upon obtaining a judgment, recording a lien against the Unit Owner's property.
- Fines cannot be collected until the proof of notice and the invitation to be heard shall be placed in the minutes of an open Board meeting (CCR 6.7B4).

F. Future Action

At this time the grievance process has ended. The Board will not allocate any additional time to the process. Additional action will need to be taken through the Arizona Homeowners Association Dispute Process (<https://azre.gov/consumers/hoa>).

2. OWNER NOTIFIES ASSOCIATION OF ALLEGED NON-COMPLIANCE

A. Information Gathering & Observations

If an Owner perceives that the Association is in non-compliance with the Governing Documents or with higher governmental laws, the Owner should review the Governing Documents or Laws to verify. The Owner should respectfully ask the Board for clarification by email (board@villaswest.org) or during the open comments time of an Board meeting.

B. First Notice of Non-Compliance

If the Homeowner is not satisfied with the clarification given, the Owner may submit in writing a *First Notice of Non-Compliance* to the Office (in person, by mail, or by email).

This statement must include:

- Name and contact information of Homeowner
- Specific details of grievance.
- References to Governing Document or governmental law in non-compliance.
- What recourse is expected of the Board.

C. Association Response

The Board will receive the *First Notice of Non-Compliance*. If there has been a significantly similar grievance within the last two years, the Board may refer to the resolution of that grievance as their response. The Office will send that response with a statement requiring a significant amount of new information in order to continue. The Owner may supply the new evidence to the Office to restart the process.

Once the *First Notice of Non-Compliance* is complete, the Board, with assistance as needed, will verify the references, review the statement, and assess the merits of suggested recourse. Within twenty-one (21) days of receiving the Notice, the Board will prepare a response to be sent by the Office. The statement will include, but is not limited to, the following:

- Clarification of issue or actions.
- References to Governing Documents or higher governmental laws.
- Action, if any, the Board will take.
- Process for first appeal.

D. Second Notice of Non-Compliance

The Homeowner may continue the grievance process by sending within ten (10) days a written response to the Board by detailing:

- Perceived problems with the clarification or references.
- Why the proposed actions of the Board will not suffice.
- Additional supporting materials if available.

Upon receiving the Second Notice of Non-Compliance, the Board will review the written statement. Within ten (10) days of receiving the appeal, the Board will respond. If the Board disagrees with the Homeowner, the Board will set up a hearing date (at least ten days from the appeal denial) and invite the Owner to present additional information.

E. Hearing

At the Hearing which may be closed or open (Owner's decision), the Owner will present additional information to the Board. The Owner (or his/her designated representative) and/or the Board shall be permitted to present evidence and/or witnesses their behalf. After all information is provided.

The Board will then deliberate in closed session. The Board will inform Owner of decision within fifteen (15) days of hearing and provide information about the Arizona Homeowners Association Dispute Process (<https://azre.gov/consumers/hoa>).

F. Future Action

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