

BRANDON CREEK HOMEOWNERS ASSOCIATION

NONCOMPLIANCE AND ENFORCEMENT POLICY

Brandon Creek Homeowners Association (BCHOA) hereby adopts the following procedures to be followed when Covenant, By-laws and/or Rules & Regulations enforcement is required.

BCHOA's primary purpose and duty is to preserve, protect and enhance property values within the Brandon Creek community. One of the ways the BCHOA accomplishes these goals is through the uniform enforcement of its covenants and rules. The rules and regulations set forth in the BCHOA documents are legally binding upon all property owners in the Brandon Creek community. These rules are for every owner's benefit as they preserve, protect and enhance the value of all of the property in the community.

GENERAL ENFORCEMENT PROCESS

As per the HOA Covenants, the BCHOA has the right to remedy any violations of the Covenants, By-laws and Rules and Regulations.

HOA Note: The BCHOA will try not to use this magnitude of enforcement unless all other reasonable attempts at remedy have been tried and blocked by the owner.

In the event that an owner is in violation of any of the provisions presented in the Covenants, By-laws and Rules and Regulations, the BCHOA may take action to remedy the violation following a thirty (30) day notice, delivered either in person, or by at least two of the following other methods: email, certified postal mail, and/or posting on the front door of the owner's house.

The BCHOA Board of Directors will cease this process if the owner in violation corrects the violation within the thirty-day notice period. This can also be the submission of a written plan, with reasonable timeline, on how the violation will be rectified. If any part of that plan is missed without excuse, the enforcement process will continue.

Following the thirty-day notice period, if no remedy or communication has been instigated by the owner, the BCHOA has the right to enter the lot, including entry to the house itself if deemed necessary due to safety concerns, and correct the condition consistent with the process described in Article IV, Section 4 (C) of the Covenants. Any costs incurred by BCHOA shall be promptly reimbursed by the owner, since an immediate lien shall be placed upon the property following the assessment definitions and process defined in the Covenants (Article VI, Section 15).

The BCHOA reserves the right to choose to levy fines prior to, during and/or instead of taking action to remedy the violation following the thirty-day notification period. A fine of \$50 may be placed against the owner's account initially. In addition, a daily fine of \$25 may be added for continued non-compliance. If a written plan with timeline was submitted as a remedy, \$50 fines may be levied for each deadline missed with additional \$25 daily fines for continued non-compliance.

Exception to the Thirty-day Notice Provision:

In the event that federal, state or local legal enforcement have resulted in a de facto guilty finding of non-compliance with code, it is understood that the owner agrees due process has been served, and the BCHOA can take immediate action to remedy the situation, should it choose to do so, after the BCHOA determines that the violating owner has not taken adequate steps to remedy the situation him/herself.

NONCOMPLIANCE COMPLAINT PROCESS

This process shall not conflict with the General Enforcement process described above. In the case of a property that is in a dangerous, unsafe, or extremely unsightly or unattractive condition, the General Enforcement process takes precedence over the Noncompliance Complaint process.

The Noncompliance Complaint process does not apply to issues and rules upheld and enforced by the Architectural Committee.

The objective of this process is primarily to help resolve disputes between owners.

Based on the BCHOA Bylaws, the Noncompliance Complaint process is summarized as follows (the full procedure is available in the Bylaws document):

1) Written Complaint

Any owner may file a complaint, which is a written statement submitted to any member of the Board. It should include the name and address of the owner, or any guest, in alleged violation, the charges with reference to the specific provisions broken, and be signed and dated by the complaining party.

The Board will deliver a copy of the complaint to the owner in alleged violation, which will serve as written notice. The notice will also inform the owner in alleged violation that they have fifteen (15) days to request a hearing. If the owner does not make a request within that time, the owner waives that right and the Board can then proceed without a hearing.

The Board will allow a cessation of this process if the owner in alleged violation corrects the violation within ten (10) days. This can also be the submission of a written plan, with a reasonable timeline, on how the violation will be rectified. If any part of that plan is unreasonably missed, the hearing process will continue.

2) Request for Hearing

If the owner in alleged violation wishes to request a hearing with fifteen (15) days of receipt of the notice of the complaint, the owner needs to submit a Notice of Defense to the Board.

The Notice of Defense should indicate that the owner in alleged violation wishes to exercise the right to have a hearing before a tribunal appointed by the BCHOA president. The Notice should be signed, dated and include the owner's address.

3) Tribunal

The HOA president appoints a tribunal of three other BCHOA owners/members, trying to avoid next-door neighbors or other owners who were part of the original complaint. The owner in alleged violation may challenge any member of the tribunal at any time prior to the hearing if the owner feels that the hearing will not be impartial. The Board (minus the president) shall vote on whether the challenge is accepted or denied. If the challenge is accepted, another member of the BCHOA shall be chosen. The tribunal will choose a chairperson who will choose a hearing officer.

4) Notice of Hearing

The tribunal will provide notice of the hearing date and time at least ten (10) days prior to the date. The hearing cannot be held sooner than thirty (30) days after the written notice was given to the owner in alleged violation. There will be no postponement of the hearing unless there are grand unforeseen circumstances (as determined by the Board and/or tribunal).

5) Hearing

Each side can examine witnesses, use exhibits, cross-examine, and rebut testimony. Everything relevant is allowed. Neither the person who filed the complaint nor the owner in alleged violation need attend the hearing, but that

may affect the decision. Any other BCHOA owners may attend. The owner in violation may use legal counsel.

6) Decision

The tribunal votes by secret ballot as to whether there was a violation – majority vote wins. The tribunal prepares a written statement of findings and recommendations for the Board to consider. The Board takes the recommendations and makes a final decision. The Board cannot impose a more stringent punishment, if any, than what is recommended by the tribunal, but they can reduce it.

The BCHOA president will give a copy of the decision to the owner in alleged violation and the person who filed the complaint. The decision of the Board is effective ten (10) days after it is served. The decision made by the tribunal and Board is final.

7) Punishment

In the event of violation, the Board may take one or more of the following actions as determined by the recommendations of the tribunal:

- a) levy a penalty assessment (fine)
- b) suspend or condition the Owner’s use of the recreational facilities
- c) suspend the Owner’s voting privileges
- d) record a notice of non-compliance with Boulder County records

Initial suspensions will only be sixty (60) days long unless the infraction is continuous whereupon the Board may continue any suspensions for as long as the violation continues.

If a violation continues to be a problem for an unreasonable amount of time following a decision resulting in punishment, the BCHOA may take other legal action to resolve the violation as well as impose the General Enforcement Process.

8) Fines

If the owner in violation does not remedy the violation, or submit a written plan with a reasonable timeline, within ten (10) days after the decision has been served, a fine of \$50 may be placed against the owner’s account. In addition, a daily fine of \$25 may be added for continued non-compliance. If a written plan with timeline was submitted, either in lieu of or following a hearing, \$50 fines may be levied for each deadline missed with additional \$25 daily fines for continued non-compliance.

Any fines not paid within thirty (30) days of the date on which they are due will bear interest at the rate of eighteen percent (18%) per annum commencing retroactively on the date the fine was due and continuing until the fine, together with any accrued interest, is paid in full (per the Covenants, Article VI, Section 13).

9) Notice of Lien

Per the Covenants (Article VI, Section 15), any fines and interest unpaid within thirty (30) days shall constitute a lien on the property. BCHOA may file this lien with the City of Boulder and Boulder County.

10) Legal

If it is necessary for BCHOA to take legal action, the owner in violation will be responsible for payment of the fines as well as any attorney’s fees incurred by the BCHOA in addition to the owner as a result of this action.