

# *Emory Creek Ranch Property Owners Association*

## **Violation Enforcement Policy and Procedures**

This enforcement policy is written to set forth guidelines and procedures to be followed from the effective date of this policy forward for enforcement of the Declarations of Covenants, Conditions and Restrictions for Emory Creek Ranch (hereafter “CCRs”) and other rules and guidelines not previously addressed in writing. Compliance with this policy will help assure fairness and consistency in enforcement and will avoid claims that an individual is being singled out while other violations are ignored. Components of this policy include identification, investigation, enforcement and an appeal process.

Enforcement of the governing documents is the responsibility of the Board of Directors (the “Board”) of Emory Creek Ranch Property Owners Association, Inc. (the “Association”). The Architectural Control Committee is appointed by the Board to assist in the following areas:

- Review project permits and construction applications for compliance with the CCRs;
- Assist in identifying new violations of the CCRs and, following direction and approval of the Board, to execute the notice and enforcement process.

### **I. Identification of Violations**

#### **A. Property Inspections**

From time to time, the Board or its agents may do property inspections to determine if violations of the CCRs have occurred. Inspections shall be in the form of periodic drives through the community by a person or persons designated by the Board and shall occur no more than twice per month (once during the first half of the month and once during the second half) on random days not to coincide with the trash collection day applicable to most residents. Alleged violations identified during such a drive through will be reported to the Board of Directors as a Complaint.

#### **B. Written Complaints**

Additionally, any member of the Association (“Owner”) may submit a written complaint to the Board by mail or email. The complaining Owner or resident shall have observed the alleged violation and shall identify the complainant (“Complainant”), the address of the property where alleged violation is located and set forth a statement detailing date, time and nature of the violation observed, reference the section of the CCRs allegedly in noncompliance and any other pertinent information. Non-written complaints or written complaints failing to include any information required by this provision might not be investigated at the discretion of the Board. A Complaint Form is available for this purpose.

## **II. Investigation**

Upon receipt of a written complaint by the Board, if additional information is needed, the complaint may be returned to the Complainant or may be investigated further by an individual or committee designated by the Board to investigate the matter. The Complaint will be investigated as soon as possible.

## **III. Enforcement**

Unfortunately, enforcement actions and monetary penalties are sometimes necessary to garner cooperation from individuals who choose to violate the CCRs. The following outlines a progressive system of notice and enforcement in accordance with the CCRs that involves written notices, fines and ultimately a lien and foreclosure, if necessary. It is the hope of the Board that violations will be remedied quickly and voluntarily and that fines and liens will be rare.

### **A. Notice and Enforcement Process**

If, after investigation of a written complaint is conducted, it is determined a violation has not occurred, or that the matter is inconclusive and the complaint will not be pursued by the Association, written notice of the decision will be mailed or emailed to the member who filed the complaint.

If, after an investigation is conducted, the complaint is found to be valid and determined to be in noncompliance with the CCRs, a violation exists and the following will apply:

- i. First Notice** When a violation is found to exist, a First Notice of Violation letter shall be sent to the Violator explaining the nature of the alleged violation, description and location of the violation, the section or sections of the CCRs in noncompliance and allotting a reasonable time period associated with the degree and urgency of such violation to take corrective action. The letter shall request that the violation be voluntarily terminated and remedied and what action must be taken to correct the violation. The letter shall notify the alleged Violator of his right to appeal and invite the alleged Violator to contact the Board or ACC to request a hearing. If an alleged Violator fails to request a hearing within 10 calendar days from the date of the First Notice letter, he is deemed to have waived his right to a hearing, and the Board may proceed with further action without one. Prompt action to correct (and avoid any recurrence) will be sought by the Board for any violation deemed, in its sole discretion, to be serious or cause an immediate risk.

Owners and residents who have moved into the community within the three (3) months prior to the violation will be sent a Special First Notice reminding them of the CCRs and informing them of the section of the CCRs that applies to the violation found at their property.

- ii. **Continued Violation After First Notice** If the Violator does not comply as outlined within the time period provided in the First Notice letter, a Second Notice letter will be sent indicating that a fine may be imposed, which, if not paid, may result in a lien being filed on the property and/or outlining other action(s) that may be taken as authorized by the CCRs (see Article III, Section B ii below) and deemed necessary by the Board. The Second Notice letter is sent by certified mail, return receipt requested.
- iii. **Legal** If the violation is not corrected within the time frame provided in the Second Notice letter, or the Violator has not made arrangements with the Association to provide an acceptable solution or timetable, the matter may be turned over to the Association's legal counsel. Fines might be imposed or other actions taken per Section IIIB below. If such action is required, the Association shall be entitled to reimbursement of all costs of collection or foreclosure and reasonable attorneys fees incurred by the Association per Article IV, Section 4.6 of the CCRs, Page 10 or litigation costs, including reasonable attorneys fees and court costs per Article V, Section 5.39 of the CCRs, Page 17).
- iv. **Repeat Violations** If a violation of the same nature reoccurs one (1) year or more after the First Violation letter was sent, the violation will be considered new and the notice and enforcement process will start from the beginning.

If a violation of the same nature is repeated within any one (1) year period after the First Violation letter was sent, the notice and enforcement process will continue uninterrupted. If a violation recurs after a fine or other action has been imposed, no notice will be sent and such repeat violation may trigger a notice of hearing before the Board. Such hearings may be scheduled as soon as possible. At such hearing, an escalating fine schedule or other actions may be imposed, the general guideline to be at least a doubling of the prior penalty.

## **B. Monetary Penalties and Other Enforcement Actions**

- i. **Fines** If the property remains in noncompliance following expiration of the period provided in the Second Notice letter, legal counsel may be engaged to send notice of a fine to the Owner. Fines of up to \$100.00 per day for each day a violation continues, beginning on the fifth day following delivery of the Second Notice of Violation may be imposed. Fines will be imposed for violation of the CCRs according to the attached schedule. Any violation which continues for over thirty (30) days will be subject to additional fines which double for each subsequent thirty (30) days that the violation continues. All fines shall be due within 60 days after the second notice was sent or after final determination if an appeal is requested and heard. Payment of fines does not relinquish responsibility to remedy the violation.
- ii. **Other Actions** If, after a reasonable time has lapsed from the date of First Notice letter, the violation has not been voluntarily terminated by the Owner, the Board shall have the authority to pursue and effect any and all procedures which may be

calculated as reasonably necessary to remove and/or terminate the cause of the violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said Owner for the purpose of removing and/or terminating said violation, the collection of said expenses incurred shall be in accordance with Article IV of the CCRs.

#### **IV. Appeal Process and Hearings**

Any Owner receiving a First Notice letter may submit a written appeal within ten (10) days from the date the First Notice was sent setting forth his position to the Board. The Owner will be given an opportunity for a hearing and no fine will be imposed until after the hearing. If an Owner fails to request a hearing in writing within this 10 day period the Owner is deemed to have waived his right to a hearing.

#### **Hearings**

The Hearing Committee shall be comprised of five individuals with two (2) being Board members. The remaining members shall be members of the ACC. Neither the Complainant nor the alleged Violator is required to attend the hearing. If a complaint is filed against a Board or ACC member, that member shall be prohibited from participating in any Hearing Committee assembled for review of such complaint.

At the beginning of each hearing, the presiding member shall introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative, may, but is not required to, make an opening statement, present evidence and testimony, present witnesses, and make a closing statement. The presiding member may also impose such other rules of conduct as may be appropriate under the given circumstances. The Board shall base its decision solely on the matters set forth in the Complaint, results of the investigation and such other credible evidence and testimony as may be presented at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all Owners; however, the Association is not required to send notice of a hearing to the Association membership.

After all testimony and other evidence has been presented at a hearing, the Hearing Committee shall, within a reasonable time, not to exceed 45 days, render its written findings and decision, and impose a fine, if applicable. A decision, either a finding for or against the Owner, shall be by a majority of the Hearing Committee members present at the hearing and shall be binding and final. Failure to strictly follow the hearing procedures set forth above shall not constitute grounds for appeal of the Hearing Committee's decision absent a showing of denial of due process.

The Violator may file a written appeal to the full Board of Directors of any adverse decision of the Hearing Committee within 14 days of the decision.

## **V. General**

### **A. Recovery of expenses and attorney fees**

In any court action or other proceedings to enforce or defend the CCRs, the rules or otherwise to address a violation by an alleged Violator, the Board shall be entitled to assess and recover its expenses, including that of reimbursement for expenses as well as attorney fees and costs against the Owner, alleged Violator and/or other party in addition to all other rights and remedies.

### **B. Deviations**

The Board acknowledges that every situation is different, that any set of guidelines and procedures cannot contemplate every circumstance and that any written document cannot address every possible contingency. As such, these procedures are put forth as a guideline as to how the Board intends to proceed when a complaint is filed but are not to be considered to be mandatory. While the Board intends to follow these guidelines under normal circumstances, the Board retains the right to exercise their discretion to deviate from the procedures when they, in their sole discretion, deem such deviation is reasonable under the circumstances.

### **C. Amendment**

The Board of Directors may amend this policy from time to time by majority vote of the entire Board.

This is to certify that the foregoing Enforcement Policy and Procedures were adopted by the Board of Directors of Emory Creek Ranch Property Owners Association, Inc. at its meeting held July 20, 2015, the effective date of this policy.

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Jesse Fosnaugh, President