

PINE CREEK VILLAGE ASSOCIATION, INC.
NOTICE AND HEARING AND
COVENANT ENFORCEMENT POLICY AND PROCEDURES
REVISED

Revised April 22, 2014

The following revised procedures have been adopted by Pine Creek Village Association, Inc. ("Association") pursuant to C.R.S. 38-33.3-209.5, at a regular meeting of the Board of Directors.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following revised policies and procedures (the "Covenant Enforcement Policy") for the enforcement of the Association's restrictive covenants:

1. Power. The Board of Directors shall have the power and duty to hear and make decisions regarding violations and written Complaints filed with the Board and impose fines or other sanctions, pursuant to this Covenant Enforcement Policy. The Board may determine enforcement action on a case by case basis, and take other actions as it may deem necessary and appropriate to assure compliance with the Declaration of Covenants, Conditions and Restrictions for Pine Creek Village at Briargate ("Declaration"), the Association's Articles of Incorporation, Bylaws, and rules and regulations promulgated there under, and to create a safe and harmonious living environment.

These enforcement provisions may be in addition to other specific provisions outlined in the Association's Declaration, Articles of Incorporation, Bylaws, or rules and regulations (collectively called the "Documents"), and the Association is not required to follow these enforcement provisions before seeking such other remedies. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control, as it deems appropriate. Collection of Assessments and other sums owed to the Association shall be excluded from these enforcement provisions.

2. Complaint. A proceeding to determine if the Documents have been violated and any enforcement measures and remedies that may apply should be initiated by the filing of a written complaint with or by the Association's managing agent. The Complaint should state the specific provision(s) of the Documents alleged to have been violated and as many specifics as are available as to time, date, location and persons involved.

3. Notice of Complaint. Upon receipt of a complaint, if the Board or managing agent determines that the allegations in the complaint are sufficient to constitute probable cause that a violation of the Documents may have occurred and that action is warranted, the Association should send a Courtesy Notice to the person(s) (the "Respondent") alleged to have violated the Documents, by email if provided by the Respondent or by prepaid, first class United States mail addressed to the mailing address of the Respondent appearing on the records of the Association. If the Respondent is a Guest, the Association may send a copy of the Courtesy

Notice and any other notice to the owner(s) of the property. Any notice to the Respondent shall be deemed to have been received no later than 3 days after emailing or mailing. The Courtesy Notice should explain the nature of the violation and advise the Respondent that Respondent has seven (7) days from the date of the notice to bring the violation into compliance, or submit a plan for compliance to the managing agent. However, for some violations, as determined by the Board, the Respondent will be required to bring the violation into compliance immediately. **For the parking of commercial and recreational vehicles on property the cure period is 24-hours versus the seven day cure period.**

4. **1st Notice of Violation & Right to Hearing.** If, after the Courtesy Notice has been sent to the Respondent the Respondent has failed to bring the violation into compliance, the Association should send a 1st Notice of Violation to the Respondent. The 1st Notice of Violation should advise the Respondent of the following: (1) the nature of the alleged violation; (2) the proposed sanction to be imposed; (3) a statement that the Respondent may present a written request for a hearing to the Board or the Covenants Committee within seven (7) days of the date of the notice; (4) a statement that the proposed sanction should be imposed as contained in the notice unless a request for a hearing is received within seven (7) days of the notice; (5) the date on which the hearing will be scheduled, which will be at the next meeting of the Board but no longer than 60 days from the receipt date of the request for a hearing. **The Board may determine that the Respondent's failure to respond or appear at the hearing constitutes a no-contest plea to the Complaint, and enforce the provisions of the Documents and impose and enforce the sanctions stated in the notice; provided however, the Board may, but should not be obligated to, suspend any proposed sanction if the violation is cured within the seven (7) day period.** Any such suspension should not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person. **For the parking of commercial and recreational vehicles on property the cure period is 24-hours versus the seven day cure period.**

5. **2nd Notice of Violation & Right to Hearing.** If, after the 1st Notice of Violation Notice has been sent to the Respondent, the Respondent has failed to bring the violation into compliance and/or missed their requested extension timeline, the Association should send a 2nd Notice of Violation to the Respondent. The 2nd Notice of Violation should advise the Respondent of the following: (1) the nature of the alleged violation; (2) the proposed sanction to be imposed; (3) a statement that the Respondent may present a written request for a hearing to the Board or the Covenants Committee within seven (7) days of the date of the notice; (4) a statement that the proposed sanction should be imposed as contained in the notice unless a request for a hearing is received within seven (7) days of the notice; (5) the date on which the hearing will be scheduled, which will be at the next meeting of the Board but no longer than 60 days from the receipt date of the request for a hearing. **The Board may determine that the Respondent's failure to respond or appear at the hearing constitutes a no-contest plea to the Complaint, and enforce the provisions of the Documents and impose and enforce the sanctions stated in the notice; provided however, the Board may, but should not be obligated to, suspend any proposed sanction if the violation is cured within the seven (7) day period.** Any such suspension should not constitute a waiver of the right to sanction future

violations of the same or other provisions and rules by any person. **For the parking of commercial and recreational vehicles on property the cure period is 24-hours versus the seven day cure period.**

6. **3rd Notice of Violation & Board Action.** If, after the 2nd Notice of Violation Notice has been sent to the Respondent the Respondent has failed to bring the violation into compliance and/or missed their requested extension timeline, the Association should send a 3rd Notice of Violation to the Respondent. The 3rd Notice of Violation should advise the Respondent of the following: (1) the nature of the alleged violation; (2) the sanction that was imposed; (3) notice of the Board's action to refer the matter to the Association's attorney within seven (7) days of the notice if the violation has not been cured; (4) a statement that further sanctions should be imposed as contained in the notice. **For the parking of commercial and recreational vehicles on property the cure period is 24-hours versus the seven day cure period.**

7. **4th Notice of Violation and Legal Action.** If, after the 3rd Notice of Violation notice has been sent to the Respondent the Respondent has failed to bring the violation into compliance, the Association should send a 4th Notice of Violation to the Respondent. The 4th Notice of Violation should advise the Respondent of the following: (1) the nature of the alleged violation; (2) the Board's referral of the matter to the Association's attorney; (3) the sanction that was imposed.

8. **Hearing.**

(a) Each hearing should be held at the scheduled time, place and date but no hearing is necessary if the Respondent fails to appear or fails to submit a written response. The hearing should be conducted in executive session if requested by the Respondent or if the Board determines that the hearing may involve personal privacy or possible litigation issues. The Board may exclude any person other than the owner or The Board may grant continuance(s) for good cause. The Respondent should be afforded a reasonable opportunity to be heard. Proof of proper notice should be placed in the minutes of the hearing. The notice requirement should be deemed satisfied if the Respondent appears at the hearing.

(b) The Board may: (a) exercise its discretion as to the specific manner in which a hearing should be conducted; (b) question witnesses and review evidence; and (c) act as it may deem appropriate or desirable to permit the Board to reach a just decision. Action taken by the Board should be fair and reasonable taking into consideration all of the relevant facts and circumstances. The Board shall constitute "impartial decision makers" which means a person or group of persons who have the authority to make a decision regarding the enforcement of the Association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the Association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the Association. Any challenge that any Board member is not impartial must be raised in writing at least five (5)

days before the hearing and the basis of such challenge must be stated. Failure to raise such challenge constitutes a waiver. The Board decides such challenges.

(c) At the hearing, the Board may consider any written or oral information produced by the owner, the Respondent 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 Respondent fails to appear or refuses to participate or to submit information. The Respondent may be represented by legal counsel so long as the Respondent gives the Board at least five (5) 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.

9. Decision. If the Respondent does not appear but a written response is filed, the Board should render its decision based on the information contained in the Complaint, the written response and any testimony or information as to all of the relevant facts and circumstances. If neither an appearance nor a written response is made, the Board need not conduct a hearing or make any further findings except that it may determine that the Respondent's failure to appear or respond constitutes a waiver of the right to a hearing, and a no-contest plea to the Complaint, and impose the sanctions provided for herein or enforce the provisions of the Documents, or both. If an appearance is made, after all testimony and other evidence has been presented to the Board at a hearing, the Board should render its decision(s) within seven (7) days after the date of the hearing, taking into consideration all of the relevant facts and circumstances. Except as provided herein, the Board's decision should have an effective date no sooner than seven (7) days after the hearing. If the Board does not inform the Respondent of its decision at the time of the hearing, the Board should provide a written notice of the decision to the Respondent's address of record via email or regular U.S. mail within seven (7) days after the decision is made.

10. Enforcement, Attorney's Fees and Fines/Sanctions. The provisions of this Covenant Enforcement Policy shall not limit, or be a condition precedent to, the Association's right to enforce the Documents by any means available to the Association, including, but not limited to, commencement of a lawsuit to force compliance or seeking injunctive relief or damages. The Association shall be entitled to reimbursement from Respondent of all reasonable attorney's fees and costs incurred by the Association in connection with any enforcement action, including any proceeding under this Covenant Enforcement Policy. If, as a result of the fact-finding process described above, it is determined that the unit owner should not be held responsible for the alleged violation, the Association shall not allocate to the unit owner's account with the Association, any of the Association's costs or attorney fees incurred in asserting or hearing the claim. Without limiting the Association's remedies under the Documents, the Association may assess fines and suspend

membership privileges in accordance with this Covenant Enforcement Policy. If the violation involves damage to Association property, the violator should pay the costs of repair or replacement. The Board may revoke or suspend the violator's privileges for a period of time equal to the duration of the violation, except that any suspension of voting rights of a Member should not exceed 60 days following any violation by such Member unless such violation is a continuing violation, in which case such suspension may constitute for so long as such violation continues and for up to 60 days thereafter.

Fine Schedule:

Fines may be levied in accordance with the following fine schedule:

<u>Notification Letter</u>	<u>Fine Amount</u>	<u>Days to Comply (from date on letter)</u>
Courtesy Notice	\$0	7
1st Notice of Violation	\$0	7
2nd Notice of Violation	\$75	7
3rd Notice of Violation	\$150	7
4th Notice of Violation	\$300 plus Legal Fees	0 - goes to attorney

For the parking of commercial and recreational vehicles on property the cure period is 24-hours versus the seven day cure period.

Each incident or each day of a continuing violation shall be considered a separate violation for which any maximum fine may be imposed. For example, each day during which a pet or activity or an item violates any Document, is a separate violation. The schedule may be amended by the Board at any time and is not intended to cover all possible violations and there are instances where the amount of fines may vary depending on the circumstances. The Board may in its discretion impose increased fines for repeated or intentional violations.

An Owner or Guest who accumulates more than 4 violations of the same Document provision within a 12-month period will be deemed to be a repeat offender (excluding yard light notices in specific circumstances). Without limiting the Board's ability to fine or suspend membership privileges in accordance with this Covenant Enforcement Policy, repeat offenders, continuing violations, or violations which have an indefinite commencement or termination date, should all be subject to an additional fine of \$150 per month until the violation is corrected as determined by the Board. Further, in the event of a determination by the Board of a willful, wanton or flagrant disregard for the provisions of the Documents, or based on the severity of the violation, the Board may impose such additional fines as are deemed reasonable by the Board without regard to the schedule set forth above.

If an Owner cures the violation and does not have a similar violation within one (1) year from the date of the original violation, the Association should begin the complaints process again with a new Courtesy Notice to the Owner.

In the event that any Guest violates the Documents and a fine is imposed, the fine should first be assessed against the owner upon notice from the Board. Fines imposed pursuant to this Covenant Enforcement Policy should become also an Assessment imposed against the record Owner's real estate and enforceable as provided in the Declaration. Owners shall be responsible for violations committed by their contractors, guests, family members, and tenants (collectively "Guests"). 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.

11. Violations or Offenses that Constitute a Present Danger. If, in its sole discretion, the Board deems that any violation is or may be an immediate or substantial threat to the health, safety or welfare of the community or an individual, the Board may impose any appropriate sanction as necessary to abate the threat to health, safety or welfare of the community or individual without prior compliance with Sections 1 through 6 above.

12. Miscellaneous.

(a) Failure by the Association to enforce any provision of this Covenant Enforcement Policy or any Document shall in no event be deemed to be a waiver of the right to do so thereafter.

(b) The provisions of this Covenant Enforcement Policy shall be independent and severable. The invalidity of any one or more of the provisions hereof by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

(c) As used herein, the term "Board" shall include any tribunal or committee appointed by the Board consistent with the Documents or consistent with the Colorado Revised Nonprofit Corporation Act.

(d) Any violation shall entitle the Board to recover from the owner 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 owner's account with the Association.

(e) Technical irregularities or defects in the Complaint, Notice, Hearing or other compliance with this Covenant Enforcement Policy shall not invalidate the proceedings or any

fine or sanction imposed. This Covenant Enforcement Policy shall be liberally construed to accomplish prompt, effective enforcement of the Association's Documents.

(f) If any doubt or questions shall arise concerning the true intent or meaning of any provision of the Association's Documents or this Covenant Enforcement Policy, 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, and they may be filed for record with the Clerk and Recorder of El Paso County.

Pine Creek Village Association, Inc.

By: 
President

Attest

This Covenant Enforcement Policy was adopted by the Board of Directors on the ~~28~~ day of April, 2014, effective the 22 day of April, 2014, and is attested to by the Secretary of Pine Creek Village Association, Inc.


Secretary