

CARLSBAD CREST HOMEOWNERS ASSOCIATION
ENFORCEMENT AND FINE POLICIES
a California nonprofit mutual benefit corporation

Carlsbad Crest Homeowners Association Enforcement and Fines Policy TABLES OF CONTENTS

Article1: Enforcement and Fine Policies	Page 1
1.1 <i>Enforcement Procedure</i>	Page 1
a. Report Violation	Page 1
b. Determine Merit	Page 1
c. Give Notice of Alleged Violation	Page 1
d. Conduct Hearing in Executive Session	Page 1
e. Take Action	Page 2
f. Give Notice of Decision	Page 2
1.2 <i>Disciplinary Hearing Procedure</i>	
a. Statement of Violations	Page 2
b. Presentation of Evidence	Page 2
c. Failure to Exercise Rights	Page 3
d. Additional Hearing Rules	Page 3
e. Preparation for Deliberation	Page 3
f. Deliberation and Decision	Page 3
1.3 <i>Monetary Penalty (Fine) Schedule and Policies</i>	Page 3
1.4 <i>Remedies</i>	Page 4
1.5 <i>Reimbursement Assessment</i>	Page 4
1.6 <i>Liens on Fines; Prohibition Against Non-Judicial Foreclosure</i>	Page 4
Fine Schedule	Page 5
Violation Report Form	Page 6

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These policies are Operating Rules as defined in the Davis-Stirling Common Interest Development Act and, to the extent they conflict with any previous Operating Rules, supersede and prevail over such previous rules. All Operating Rules, whether characterized as rules, policies, procedures and otherwise are subject to the provisions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions and the Second Amended and Restated Bylaws currently in effect for this Association.

ARTICLE 1: ENFORCEMENT AND FINE POLICIES

1.1 Enforcement Procedure.

- a. *Report Violation:* Any Resident, Member, Director, or rules enforcement personnel claiming a violation must submit an Alleged Violation Report (Exhibit A to these Rules) describing the violation to the Board of Directors at a Board meeting or to the Association's Manager during regular business hours. An email to the Associations Manager describing the violation may suffice as well. No anonymous Alleged Violation Reports will be considered unless the information can be independently verified. All violation reporting should include corroborating witness contact information and/or photos of the alleged violation.
- b. *Determine Merit:* The Board will determine if the alleged violation has possible merit and, if so, give notice as provided in the next paragraph. The Board may delegate this duty to the contracted Managing Agent. If the alleged violation is determined to not have merit, the Board will indicate why further action was not taken and report this result to the person reporting the alleged violation.
- c. *Give Notice of Alleged Violation:* Following an initial showing of merit, the Board will send a Notice of Intent to Impose Discipline to the Member stating the nature of the alleged violation(s), the provision(s) of the governing documents violated and the Member's right to appear before the Board of Directors at a hearing in executive session on at least 15 days' notice by any means authorized under Civil Code §4040 for individual delivery, before imposing a monetary penalty (fine) and/or any other discipline. No courtesy notice or warning of Discipline is required. If, at the determination of the Board, the alleged violation is minor in nature (e.g. nuisance violation), the Board may request the Member remedy the violation by noticing the Member via a courtesy or warning notice instead of a Notice of Intent to Impose Discipline. If this is not the first of the same alleged violation of this Member, the Board may require a hearing as provided in the next paragraphs.
- d. *Conduct Hearing in Executive Session:* All disciplinary hearings with the Board of Directors will be held in executive session. The Member responsible for the alleged violation may be heard, orally or in writing, and may present evidence, including witness testimony and documents.

- e. *Take Action:* If the Member is found to have violated the governing documents, the Board may exercise any appropriate option allowed under the governing documents or the law, including:
 - i. Seek any legal remedy, including, without limitation, imposing a lien and/or foreclosure on the Member's property, where allowed by law;
 - ii. Impose one or more monetary penalties (fines);
 - iii. Allow the Member a reasonable period of time to correct any ongoing violations, such as architectural or nuisance violations;
 - iv. Correct (or cause to be corrected) the violation. Then, after a further notice and hearing, impose a reimbursement assessment upon the Member for the costs and expenses of doing so, including attorneys' fees, when allowed by law;
 - v. Suspend voting rights and/or other Membership privileges, such as recreational common area use rights or voting rights, for a period not to exceed thirty (30) days for each violation or until the violation is cured, effective no sooner than five (5) days after the notice of disciplinary action;
 - vi. Initiate Internal Dispute Resolution and/or Alternative Dispute Resolution as allowed by law;
 - vii. Take the matter under consideration to allow the submission of additional documentary or other evidence, or further investigation to be conducted, after which the decision on whether to impose any discipline will be considered at a future executive session meeting.
 - viii. Take no disciplinary action for a first-time violation when circumstances warrant. However, the violation and justification for taking no action should be noted in the Member's file.
- f. *Give Notice of Decision:* The Member will be notified of any disciplinary action rendered by the Board of Directors within 15 days after the decision.

1.2 Disciplinary Hearing Procedure.

- a. *Statement of Violations.* The acting chairperson of the meeting will make a statement of the alleged violation(s).
- b. *Presentation of Evidence.*
 - i. Each party (including the Board where appropriate) may make an opening statement, orally or in writing, starting with the complaining party's case.

- ii. In turn, beginning with the complaining party, each party may produce documentary evidence and testimony. Each party may then cross-examine the opposing party and the opposing party's witnesses. Witnesses providing testimony (orally or in writing) must appear and be subject to cross-examination.
 - iii. Each party may make a closing statement, orally or in writing.
 - iv. Formal rules of evidence will not apply, and all evidence should be considered. The Board will give whatever weight it feels is appropriate to each piece of evidence.
- c. *Failure to Exercise Rights.* Any party may choose not to exercise any rights during the hearing process (e.g. not give an opening statement). Even if an accused party chooses not to attend the hearing and be subjected to cross examination, the Board may not automatically find the accused to be in violation. The accusing party, including the Board, must still present or possess sufficient evidence to prove the violation. A non-attending accused may present other evidence or witnesses to provide testimony supporting his or her case. But the accused may not submit his or her own written statements or written statements of witnesses unless they also subject themselves to cross-examination.
- d. *Additional Hearing Rules.* The Board may specify other reasonable rules for the hearing, provided the alleged violator can confront and cross-examine the accuser and the witnesses (if their personal knowledge is necessary to prove the claim), and other corroborating evidence of the violation, and be heard and present evidence in his or her own defense.
- e. *Preparation for Deliberation.* After receiving all evidence, the alleged violator, complaining party and witnesses are excused. If the complaining party is a director, with no personal stake in the dispute, such director may remain.
- f. *Deliberation and Decision.* The Board will discuss, deliberate and decide what action to take if any. The Board may table the matter under submission, provided a final decision is made at a subsequent executive session meeting within 35 days after the original hearing. Notice to Member violator must be given within 15 days of a decision to impose disciplinary action, if any. No notice is necessary if the Board takes no disciplinary action. The accuser is not entitled to any notice of action taken or not taken.

1.3 Monetary Penalty (Fine) Schedule and Policies. If the Board finds a violation of the governing documents, a monetary penalty (fine) as outlined in the Fine Schedule may be imposed for each violation, subject to the following additional provisions:

- a. For continuous violations:

- i. Continuous violations will be considered a violation every day from the first day of the violation until remedied in full. For the purposes of due process and notice, violations of the same provision on non-consecutive days will be deemed continuous until remedied for at least thirty (30) consecutive days.
 - ii. Continuous violations are subject to a monetary penalty (fine) of up to \$250.00 per day for every day of the violation, whether consecutive or not, until the violation is remedied, subject to a maximum monetary penalty (fine) of \$5,000.00 per calendar month. Continuous violation per day fines is in addition to the initial fine as outlined in the Fine Schedule.
- b. Multiple violations may be addressed in one or more Notice(s) of Intent to Impose Discipline to the owner and may be the subject of and heard at one or more executive session hearing(s).
- c. All monetary penalties (fines) and reimbursement assessments are due upon notice given and are delinquent 15 days after they become due.

1.4 Remedies. Unless prohibited by other governing documents, and when permitted by law, the Association may take legal action or correct, remedy or cure a violation, and seek a reimbursement assessment against the Member, or file a memorandum of costs or motion for attorneys' fees, to recover costs, expenses and attorneys' fees incurred by the Association.

1.5 Reimbursement Assessment. If a violation is found which causes the Association to incur a financial obligation or expense, then the Member responsible for the violation will be subject to a reimbursement assessment in the amount of the obligation or expense incurred by the Association after proper notice and a hearing to the extent allowed by law.

1.6 Liens on Fines; Prohibition against Non-Judicial Foreclosure. A monetary penalty (fine) imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents, Rules and Regulations, Architectural Guidelines, Election and Voting Rules, may be treated as and is hereby an assessment that may become a lien against the Member's separate interest, but such lien may not be enforced by the sale of the interest under Sections 2924, 2924b, and 2924c (non-judicial foreclosure).

FINE SCHEDULE

Fines for violations will be levied in accordance with the following schedule:

Leasing Provision (Any violation of Section 7.2 of the CC&R's) up to \$2,000

Hazardous Activities (Risk of harm to person or property) up to \$2,000

Architectural Violations (failure to follow CC&R's and Architectural Guidelines) up to \$750

Use Restrictions (Any violation of the Governing Documents) up to \$500

Fines will be in addition to any assessments levied to reimburse the Association for expenses and costs.

Special Note: Should a violation occur which imposes a financial obligation to the Association; the party responsible for the violations shall reimburse, by way of special non-lien assessment, the Association for this financial obligation. If, for example, a party damages a fence, tree or other common property, repair and replacement costs will be charged to the owner of the unit responsible for the party.

Any fines or administrative costs incurred to enforce the Governing Documents be the responsibility of the unit owner and, as such, should be provided for within any lease or rental agreement entered into. Court costs to collect such sums shall also be the responsibility of the unit owner.

