

Resolution of the Rosewood Hills Property and Homeowner's Association  
REGARDING POLICIES AND PROCEDURES FOR COVENANT AND RULE ENFORCEMENT

Adopted on: January 19<sup>th</sup>, 2017

**SUBJECT:** Adoption of a policy regarding the enforcement of procedures for the notice of alleged violations, conduct of hearings and imposition of fines.

**PURPOSE:** To adopt a uniform procedure to be followed when enforcing covenants and rules to facilitate the efficient operation of the Association.

**AUTHORITY:** The Declaration of Protective Covenants, Articles of Incorporation Water System Policies and Procedures (including the current Appendix A) and Bylaws of the Association ("Governing Documents"), and Colorado law.

**EFFECTIVE DATE:** February 1<sup>st</sup>, 2017

**RESOLUTION:** The Association hereby adopts the following procedures to be followed when enforcing the Governing Documents of the Association:

1. Reporting Violations. Complaints regarding alleged violations of any of the Governing Documents may be reported by , the Association's management company, if any, or Board member(s) by submission of a written complaint.
2. Complaints. Complaints by a member of the Board of Directors, , or the manager, if any, may be made in writing or by any other means deemed appropriate by the Board if such violation was observed by the Director or Manager, or reported to the Director or Manager by a third party.
3. Investigation. Upon receipt of a complaint by the Association, the complaint may be investigated further by a Board designated Board member. The Board shall have sole discretion in appointing an individual to investigate the matter. The appointed Board member shall contact the alleged violator to discuss the nature of the alleged violation and possible agreed resolution and disposition.
4. Initial Warning Letter. If there is no resolution and disposition and the Board of Directors finds a violation exists, an initial warning letter shall be sent to the Violator explaining the nature of the violation and requiring that the violation ceases and desists. The Violator will have a determined time as determined by the Board from the date of the letter to come into compliance. The foregoing procedure will not be used, however, in the event the violation is determined by the Board to be a Repetitious Violation as defined in Paragraph 12 of this policy. In such event, the procedure outlined in Paragraph 12 shall be followed
5. Continued Violation After Initial Warning Letter. If the alleged Violator does not come into compliance within the timeline set of the initial warning letter, this will be considered a second violation for which a fine may be imposed following notice and opportunity for a hearing. The second and subsequent letter sent by certified mail with return receipt requested;

such service shall be deemed sufficient for the purpose of delivery (s) shall then be sent to the alleged Violator, explaining the nature of the violation, the proposed fine to be imposed, providing the opportunity for a hearing. The letter( s) shall further state that the alleged Violator is entitled to a hearing on the merits of the matter at the next Board meeting provided that such hearing is requested in writing ten (10) prior to the Board meeting. The foregoing procedure will not be used, however, in the event the violation is determined by the Board to be a Repetitious Violation as defined in paragraph 12 of this policy. In such event, the procedure outlined in paragraph 12 shall be followed.

6. Notice of Hearing. If a hearing is requested by the alleged Violator, the Board, committee or other person conducting such hearing as may be determined by the sole discretion of the Board, shall serve a written notice (via certified mail with return receipt requested; such service shall be deemed sufficient for the purpose of delivery) the hearing to all parties involved prior to the hearing date.

7. Impartial Decision Maker. Pursuant to Colorado law, the alleged Violator has the right to be heard before an "Impartial Decision Maker". An Impartial Decision Maker is defined under Colorado law as "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 architectural requirements, and 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." Unless otherwise disqualified pursuant to the definition of Impartial Decision Maker, the Board may appoint to act as the Impartial Decision Maker the entire Board, or specified members of the Board.

8. Hearing. At the beginning of each hearing, the presiding officer, 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 officer may also impose such other rules of conduct as may be appropriate under the given circumstances. Neither the Complainant nor the alleged Violator is required to be in attendance at the hearing. The Impartial Decision Maker shall base its decision solely on the matters set forth in the Complaint, results of the investigation and such other credible evidence as may be presented at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all Owners. After all testimony and other evidence has been presented at a hearing, the Impartial Decision Maker shall, within a reasonable time, not to exceed 14 days, render its written findings and decision, and impose a fine, if applicable. 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.

9. Failure to Timely Request Hearing. If the alleged Violator fails to request a hearing at least ten (10) days prior to the Board meeting, or fails to appear at any hearing, the Impartial Decision Maker may make a decision with respect to the alleged violation based on the Complaint, results of the investigation, and any other available information without the necessity

of holding a formal hearing. If a violation is found to exist, the alleged Violator may be assessed a fine pursuant to these policies and procedures.

10. Notification of Decision. The decision of the Impartial Decision Maker shall be in writing and provided to the Violator by certified mail return receipt requested within 14 days of the hearing, or if no hearing is requested, within 14 days of the final decision.

11. Fine Schedule. The following fine schedule has been adopted for all recurring violations of the Governing Documents:

First notice of violation: Initial Warning Letter

Second notice of violation: Warning letter/Notice of Hearing

Third and subsequent notice of violations: \$100.00 per occurrence

The Board may impose a fine of \$100 per occurrence for any violation of the Governing Documents.

Willful and wanton continuing violations shall be considered a separate occurrence for each day as they continue and a per diem fine may be imposed, after the hearing, until such time as the work ceases, plans are submitted or the violation is remedied, as the case may be. All fines shall be due and payable upon notice of the fine and will be late if not paid within 10 days of the date that the Owner is notified of the imposition of the fine. A monthly late charge may be imposed. All fines and late charges shall be considered an assessment and may be collected as set forth in the Governing Documents. Fines shall be in addition to all other remedies available to the Association pursuant to the terms of the Governing Documents and Colorado law, including the Association's right to collect attorney fees as authorized by Colorado law. The Board may waive all, or any portion, of the fines if, in its reasonable discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the violator coming into compliance with the Governing Documents.

12. Repetitious Violations. Repetitious Violations are defined as a series of identical or substantially similar individual violations that occur repeatedly or continuously within a period of time to be determined in the discretion of the Board, with each individual violation separated by a period of no less than 1 day, nor more than 90 days, the result of which is a pattern of violations of the same Governing Document provision. In the event of such Repetitious Violation, in the discretion of the Board, each instance of noncompliance may constitute a separate violation, and the Board shall not be required to provide a period of 14 days from each violation for the alleged Violator to come into compliance. A warning letter shall be sent for the first violation in the series. After the warning letter, the Board may cause violation notices to be sent for each violation in the series stating the amount of the fine to be imposed (pursuant to the Fine Schedule in Paragraph 11), and giving notice and an opportunity for a hearing. The Board shall individually consider each violation for which a hearing is requested, but is permitted to combine any and all hearings requested for Repetitious Violations on one date. In any case, the

Owner will receive a warning letter on the first instance of the violation. On the second and subsequent instances of the violation, the owner will receive a \$100 fine letter, and notice and opportunity for a hearing. If hearings are requested, the Board may set them all on the same date.

13. Waiver of Fines. The Board may waive all, or any portion, of the fines if, in its sole discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the Violator coming into and staying in compliance with the Governing Documents.

14. Enforcement, Attorneys, Fees and Fines and Sanctions

The provisions of these policies and procedures shall not limit or be a condition precedent to the associations right to enforce the Governing Documents by any means available to the Association including but not limited to commencement of a lawsuit to force compliance or seek injunctive relief for damages. The Association shall be entitled to reimbursement from violator of all reasonable attorneys fees and costs incurred by the Association in connection with any enforcement action including any proceedings under these Policies and Procedures.

If the violation involves damage to Association property the Violator shall pay the cost of repair or replacement.

15. Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Governing Documents and the law of the State of Colorado governing the Project.

16. Deviations. The Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.

17. Amendment. This policy may be amended from time to time by the Board of Directors.

**PRESIDENT'S CERTIFICATION:** The undersigned, being the President of RHPHA, a Colorado nonprofit corporation, certifies that the foregoing Resolution was adopted by the Board of Directors of the Association, at a duly called and held special meeting of the Board of Directors on January 19<sup>th</sup>, 2017 and in witness thereof, the undersigned has subscribed his/her name.

**Rosewood Hills Property and Homeowner's Association Inc.**

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President

Attest:

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Secretary

This Policy regarding Policies and Procedures for Covenant and Rule Enforcement was adopted by the Board of Directors of the Association on the 19<sup>th</sup> day of January 2017, effective the 1<sup>st</sup> day February 2017, and is attested to by the Secretary of the Association.

Damian Cercone, Secretary