

**RESOLUTION OF THE BOARD OF DIRECTORS  
COPPER CREEK HOMEOWNERS ASSOCIATION**

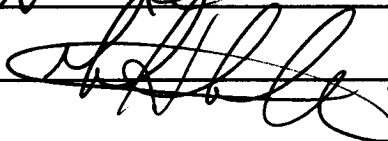
This resolution is adopted by the Board of Directors of COPPER CREEK HOMEOWNERS ASSOCIATION pursuant to Arizona Revised Statutes §33-1803, which provides that the Association's Board of Directors is entitled to impose fines for violation(s) of the Declaration of Covenants, Conditions and Restrictions (CC&R's) and any rules adopted by the Board of Directors. The procedure for imposing fines for such violation(s) is set forth below and supersedes any other such procedure previously adopted by the Board:

**Effective Date.** The effective date of this resolution is May 15th, 2004.

DATED this 28th day of April, 2004.

COPPER CREEK HOMEOWNERS ASSOCIATION

By: , President

Attest: , Secretary

## Board Policy for Cooper Creek Enforcement Procedures

- 1) **“Friendly Reminder”** In most cases, and when appropriate as determined by the Association Manager, the first notification to an Owner of their violation of the CC&Rs or a rule will be by means of a “friendly reminder” letter. The Association Manager will issue the letter via regular mail.
  
- 2) **“Notice of Violation”** - If within fourteen (14) days of the date of the **“Friendly Reminder”** compliance is not gained, a written **“Notice of Violation(s)”** together with a request to cease and desist from an alleged violation(s) shall be sent to the Owner of the Lot via regular mail and shall specify the relevant facts relating to the violation. If the Owner is leasing his/her home, the Association may provide a copy of the Notice of Violation(s) to the Owner's tenant. *At the Association Manager's discretion, the process may begin with the Notice of Violation, bypassing the Friendly Reminder.*
  
- 3) **Definition - Continuing Violation(s)**. Each day a violation(s) continues after notice to cease has been given by the Board to the Owner constitutes a separate violation(s) and can be subject to a fine.
  
- 4) **“Notice of Hearing”** - If the violation(s) continues past the period allowed in the **“Notice of Violation”** or if the same rule or provision of the Governing Documents is subsequently violated, the Association Manager may send additional **“Notice of Violation”** letters. In its discretion, the Board may decide to send the Owner a written **“Notice of Hearing”** via both regular and certified mail. The notice should contain:
  - a) The nature of the alleged violation(s);
  - b) The time and place of the hearing, which shall be not less than seven (7) days from the date of the notice;
  - c) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his or her behalf; and
  - d) The proposed sanction to be imposed, which includes the imposition of a fine and the payment of any attorney fees incurred by the Association.
  
- 5) **Hearing**.

The meeting will be held in executive session pursuant to the Notice of Hearing and the Owner shall be afforded a reasonable opportunity to be heard. In cases in which a complaining homeowner initiated the process, the Board shall evaluate the proof according to the attached Policy on Evaluating the Proof.

  - a) Before any sanction becomes effective, the Association shall submit proof of the notice and the invitation to be heard.
  - b) Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered into the Owner's lot file.
  - c) The notice requirement is satisfied if the Owner appears at the meeting.
  - d) The minutes of the meeting shall contain a written statement of the results of the hearing and the sanctions, if any, to be recommended to the Board.

**6) Imposition of Fine and any other Sanctions.**

At the conclusion of the hearing, the Owner may be excused from the hearing and the Board of Directors shall deliberate on the amount of the fine to be imposed, if any, based on:

- a) The seriousness of the violation(s),
- b) Whether this is a first violation or a continuing violation(s)
- c) Whether the type of offense poses a danger to property or any person
- d) Any other extenuating circumstances and whether the Owner agrees in good faith to correct the violation(s) within the time specified by the Board of Directors.
- e) Whether the amount is sufficient to obtain compliance, based on the facts
- f) After the Board of Directors determines the amount of the fine, the Board of Directors shall send notice to the Owner of the amount of the fine and its due date.
- g) The Board of Directors is empowered to impose a fine for each day that the violation(s) continues. **SEE FINES GUIDELINES BELOW.**

**The Fines Guidelines are not binding. The Board of Directors may impose a fine in any reasonable amount, based on the application of the factors above**

**7) Request for Reconsideration to the Board of Directors (Appeal).**

The Owner may request reconsideration by the Board of Directors.

- a) In order to schedule an appearance before the Board, the Owner must submit a written request to the Association Manager within seven (7) days of receipt of notice of the sanctions.
- b) The meeting shall be scheduled and the Owner notified of the date, time and location via certified and regular mail.
- c) The meeting will be held in executive session pursuant to the Notice of Hearing and the Owner shall be afforded a reasonable opportunity to be heard.
- d) At the conclusion of the meeting, the Owner may be excused from the meeting and the Board shall issue a ruling on whether the sanction stands, is modified or is rescinded.
- e) The Board shall send a written notice to the Owner of its ruling.
- f) The ruling of the Board will be final.

**8) Payment of the Fine and/or Penalties.** The Board shall advise the Owner that any fine, which is not paid within fifteen (15) days of its due date, is delinquent and subject to late fees and interest the same as any other assessment, subject to applicable Arizona law (ARS 33.1803.B limits to the greatest of \$15.00 or 10% of the amount due).

**9) Collection.** Collection of any fines and penalties may be enforced against any Owner in the same manner as the collection of delinquent assessments.

## **FINES GUIDELINES**

**The Fines Guidelines are not binding. The Board of Directors may impose a fine in any reasonable amount, based on the application of the factors above**

1. No fine shall be assessed until the Member who has committed a violation has been given due written notice.
2. Monetary fines for violation(s) of the governing documents and/or rules and regulations of the Association may be as follows:
  - a. First violation \$25
  - b. Second violation (of the same nature) \$50
  - c. Third violation (of the same nature) \$100
  - d. Each violation after the third (of the same nature) \$250
3. An additional fine that accrues each day may be assessed after the aforementioned fines have been assessed if the violation is a continuing one. (**Example:** A Homeowner installs an improvement without ARC approval. A First violation fine of \$25 is assessed. If the violation continues uncorrected, an additional fine in a reasonable amount would be assessed for each day until the violation ceases. The Member ultimately corrects the violation. The Member installs another improvement without ARC approval. A Second violation fine of \$50 is assessed. If the violation continues uncorrected, an additional daily fine would be imposed until the violation ceases)
4. It is the obligation of the Member to advise the Association in writing that the violation has ceased.

There are many instances where a violation occurs intermittently or at such time(s) that the property manager cannot observe it during his routine drive-by inspections of the Cooper Creek Homeowners Association, (CCHOA), premises. Furthermore, it is not economically or physically feasible to employ measures that would afford the CCHOA property manager to be available to observe every violation as it occurs. Many violations will be observed and consequently reported to the CCA property manager by individual members of CCA as "sole witnesses".

Examples of such violations, but not limited to, are:

1. Garbage cans not being stored away timely.
2. Parked cars in driveways and streets.
3. Issues of noise such as loud parties, wind chimes, dog barking.
4. Issues of dog waste upon private property or common areas.
5. Issues of flood light spillage.
6. Feeding of wild animals.
7. Trespassing

This policy articulates the Board's approach to the "he said, she said" or "he says I did it, but I didn't do it" dilemma or controversy that can evolve with regard to enforcement procedures when there is only one Member who is a "sole witness" to a violation that cannot be confirmed or corroborated by the property manager or other Members. The intent of this policy is to ensure fair and equitable enforcement of the CC&Rs for all Members as individuals and to prevent abusive, malicious or retaliatory "sole witness" reporting of alleged violations between feuding Members.

When the property manager receives a "sole witness" violation complaint that cannot be confirmed in person, he shall inform the Member complainant to submit a complaint to the Board in person. Upon notice seven days before the next scheduled Board meeting, all such "sole witness" complaints shall be heard by the Board during "Executive Session".

It shall not be the burden of any Member to personally contact or approach any other Member regarding the witnessing of a breach or violation of the CC&Rs or any other governing document of Cooper Creek. A witnessing Member has every right to bring his grievance or complaint of a violation to the property manager or the CCHOA Board of Directors for enforcement. However, when he is the "sole witness," he will be a required to bring his complaint to the Board in person to be heard.

The Member Complainant shall have the burden of proving the violation by a preponderance of the facts. The Member Complainant shall be required to prove to the Board that it is more probably true that the violation occurred. The proof of the violation must outweigh the proof offered by the alleged violator that the violation did not occur.

Physical evidence such as police reports, photographs, videos or sound recordings may further serve to prove credibility of oral testimony. Although no

Member shall be burdened with making personal contact with an alleged violator, a Member may initiate correspondence with an alleged violator as a matter of “self help” relief. Although not required, any documentation of such correspondence may be weighed as evidence supporting the credibility of testimony of a “sole witness” before the Board.

The standards of evidence set forth herein is not limited to a “sole witness” and shall also apply to multiple Members who join to come before the Board to give testimony regarding a violation that cannot be confirmed or corroborated by the property manager.

Upon the presentation of credible evidence by a “sole witness” or multiple Members, the Board may proceed with citing the violating party per the Cooper Creek Enforcement Procedures.

The standards of proof set forth herein shall also apply to any Member who comes before the Board to defend himself against a violation for which he has been cited.

All matters concerning the enforcement of the CC&Rs shall be heard in “Executive Session”.

**COPPER CREEK HOMEOWNERS ASSOCIATION**

**DECLARATION OF FACT BY "SOLE WITNESS"**

I, \_\_\_\_\_ declare under penalty of perjury that the following facts are true and correct:

- 1) I have personal knowledge of the facts contained in this Declaration. I am competent to declare the facts contained in this Declaration.
- 2) If requested, I agree to appear and testify, in any adjudicatory proceeding, to the facts contained in this declaration. I further agree to appear and testify without being served with a subpoena.
- 3) List facts and attach other documentation as needed.

\_\_\_\_ Check here if attaching additional documents

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Executed on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_