

Summers Creek Operating Policy & Procedure

Approved by the SCHOA Board March 13, 2014

(Orig. Date: 12-04-11 Revision Date: 3-5-14 Revision: 6)

Subject: Covenant & Rule Enforcement

Purpose: To establish a policy and procedure for the Summers Creek Board of Directors to fairly and consistently enforce the Summers Creek Covenants, Conditions and Restrictions (CC&R) and operating rules in accordance with Articles of Incorporation Article IV, Section 4.2.3 and Bylaws Article VII Section 7.3.9. This procedure will apply to all properties, homeowners, guests and tenants.

General

- A. The CC&R together with Board established Community Operating Rules, if enforced, serve to maintain a high standard for the community thereby preserving its quality and property values.
- B. The Board may become aware of a covenant violation through written complaints from homeowners, observation by Board members, ARC members or the Standards Committee.
- C. The board Secretary or designee appointed by the Board will maintain a violation log (Appendix A) to track the status of violations from the time they are opened until they are closed to ensure consistent and timely follow-up. The log will be available to all board members for review as a shared spreadsheet document.
- D. The Board will use a prioritized table of covenants to focus its efforts and better manage its time. The board may change the order of priorities by a majority of the full Board as they deem necessary.
- E. Covenant violations resulting from failure to get the required ARC approval for any alteration under ARC control will be considered a priority level 1 covenant violation and subject to request for corrective action and fines from the Board in accordance with this procedure.
- F. The Board will apply the progressive approach described below in the Procedure section of this document to enforce violations. For any given violation, the implementation of each of these steps is at the Board's discretion and subject to Board vote in accordance with the same parliamentary procedure applied in any other matter of Board deliberation per Association Bylaws Article XVII, except between meetings when the President may act up to and including procedural Step #8 with the concurrence of two other Board officers, not the same person.
- G. The Board will appoint and maintain a Standards Committee made up of at least three homeowners who are neither on the board nor related to any current board members. The purpose of this committee is to render final decisions regarding instances in which fines should be assessed and the amount of such fines. The Committee does not have to meet, but can render its decisions through documented coordination among its members; facilitated by its Chairperson. If the Committee, by majority vote, does not approve a proposed fine, it may not be imposed. [ref: Ch720.305(2)(b), F.S.]
- H. The Board will strive to maintain a neighborly, community-friendly approach in the enforcement of the CC&R and rules by promoting awareness, encouraging voluntary compliance and providing guidance and assistance in resolving violation issues rather than merely demanding compliance through letters. Periodic opinion surveys should be used by the Board to solicit feedback from homeowners in order to gauge it's standing with the membership and make adjustments where necessary.

I. With the exception of discussion in open Board meetings, all violations, both open and closed are to remain confidential to the Board and the Standards Committee and not discussed with anyone but legal representation when appropriate.

J. This procedure is not intended to augment or supercede the CC&R in any way. Should any conflict arise between this document and the CC&R, the CC&R will take precedence and this procedure will be revised accordingly at the earliest opportunity by the Board of Directors.

Procedure

1. Upon becoming aware of a potential violation, the Secretary or designee will log the alleged violation for follow-up, tracking and disposition into the Association's Covenant Violation Log (Appendix A).

2. At its regularly scheduled Board meetings, the Board will:

- a. Review alleged violations that have been logged since the last meeting, either as part of the President's report, New Business or in a special segment reserved for covenant violation matters. This is at the discretion of the President.
- b. Determine the validity of new violations based on photographs or reliable eyewitness accounts from Board or ARC members in light of the applicable CC&R paragraph.
- c. Assign valid violations a priority level as indicated by the Covenant Priority Table (Appendix B).
- d. Designate a point of contact from the Board to contact the resident.
- e. Set a reasonable correction date for each violation based on the nature of the violation and the amount of anticipated effort required on the part of the resident to achieve compliance.
- f. Note the correction date and the date of the planned follow-up in the Log along with the name of the Board member assigned to do the follow-up.
- g. Review the status of open violations at each Board meeting and determine subsequent follow-up action in accordance with this procedure.

Note: Between meetings, the President has the authority to initiate action on a reported or observed violation up to and including Step #8 below with the concurrence of two other officers (cannot be the same person holding two offices). The President also has the authority to take follow-up action decided by the Board at a previous meeting when the planned follow-up action falls between meetings. The President will notify the board of any action to be taken between meetings via email and report all actions taken between meetings to the Board at the next regular Board meeting. All actions taken between meetings will be logged by the Secretary or designee either at or immediately following the meeting at which they are reported.

3. The designated Board member will contact the resident about their violation either by phone, email or by scheduling an in-person visit. Optionally, a 1st Notice letter can be mailed, emailed or hand-delivered from the President or Secretary at the President's discretion. In either case, there will be a written record of the 1st Notice delivered to the resident. Notice of violations on tenant occupied properties will be sent to the Property Management Company and the owner. The 1st Notice, intended to be a cordially informative letter, will include the following elements:

- a. Description of the violation
- b. Reference to the applicable covenant including Article, Section, Paragraph
- c. Location of the CCR online for reference.
- d. The date when the Board requests the violation to be corrected.
- e. A contact phone number, email address and postal address so the resident can contact the Board to discuss.

4. The resident may agree with the Board's assessment and elect to comply with the Board's request to correct the violation condition or disagree with the Board's position and elect not to comply. Also, they may want to contest/appeal the Board's decision that the condition is a covenant violation requiring correction.

- a. If the resident agrees to comply and correct the condition, the Board will promptly issue a note to the resident acknowledging closure of the violation and appreciation of their cooperation.
 - b. If the resident agrees to correct the condition and requests more time, the Board will make every effort to work with the resident by allowing any reasonable extension deemed justified. If there is indication that an effort is being made by the resident to correct the condition, the Board should apply discretion to determine a fair time for completion by the resident before any further actions are taken.
 - c. If the resident disagrees with the violation, he may contest and appeal the alleged violation in writing to the Board upon receipt of the 2nd Notice or request to appeal the violation at the next Board meeting.
 - d. Throughout the covenant enforcement process, the violation condition shall be periodically monitored for change, correction, signs of effort being made, etc., so that the board is always aware of the current state.
5. Ten days after the 1st Notice (simple corrections) or Thirty days after the 1st Notice (complex corrections), if the violation is uncontested and no appeal is made, and the resident has not corrected the condition, has made no apparent effort to correct the condition, has not contacted the Board to discuss the violation or request more time, the President or Secretary will send a 2nd Notice letter to the resident via registered mail. This 2nd letter will reiterate the details of the violation and request correction of the condition in 10 days (unless the Board has granted more time) before fines and legal action are considered. In addition, the 2nd Notice will include instructions on how to arrange appearing at the next Board meeting to contest and appeal the violation.
6. If the resident does not correct the condition within the time stipulated by the 2nd Notice and has not contacted the board to arrange for an extension or an appeal, the Board will assign the case to the Standards Committee for consideration of fine assessment. Extensions will only be granted if there is some indication that an effort has been made to correct the violation condition, such as a visible signs of a change in the violation condition or a written quote from a contractor with a confirmed start date, etc.
7. The Standards Committee will provide the resident an opportunity for a hearing. According to Florida State Law, fines can be up to \$100/day, but no more than \$1000 total per offense. If the Committee recommends a fine, the Board will send a 3rd Notice via registered mail (return receipt requested), which will provide 14 days notice of date fine assessment will begin. [ref: Ch720.305(2)(b), F.S.]. If the Standards Committee does not recommend a fine, the Board may send the 3rd Notice 10 days after the 2nd Notice. Note: Repeat violations may be expedited directly to the Standards Committee by the Board or the President for fine consideration, without having to repeat the procedure from the beginning as if it were a new violation.
8. If a fine was approved by the Standards Committee and the resident has not corrected the violation 14 days after receipt of the Board's 3rd Notice, taken any action to correct the violation condition or requested more time, the Board will follow through with the fine assessment beginning on the 15th day.
9. Subsequent to the assessment of fines, if the condition remains uncorrected, the Board may consider authorizing the President to contact the association attorney for further action, which may include one or more demand letters. The attorney may suggest mediation, the cost of which will be shared by both the Board and the resident.
10. If mediation fails to produce an acceptable result for the Association, depending on the nature and severity of the violation, the Board of Directors may elect to pursue the violation in court. Payment of all costs in connection with the Board's pursuit of the violation; including: legal fees, court costs, mediation fees, etc., will be the responsibility of the resident when the Association prevails. Options available to the Board for a resident's non-payment of these costs include a lien on the property, Small Claims Court and Civil Court.