
Elk Springs Homeowners Association, Inc.

Enforcement of Rules and Regulations, Hearing Procedures and Schedule of Fines

Pursuant to the authority granted by Article 4.14 (A) of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Springs, Garfield County, (the “Declaration”) and as further authorized and required by the Colorado Common Interest Ownership Act, C. R. S. 38-33.3-209.5 (1) (b) (IV), et seq. (the “Act”), the Board of Directors of Elk Springs Homeowners Association, Inc. (the “Association”) adopts the following policy and procedures for the enforcement of the Association’s Rules and Regulations. Unless otherwise defined in this Policy and Procedure, initially capitalized or terms defined in the Declaration shall have the same meaning herein. This Policy and Procedure amends and supersedes all prior rules regarding covenant and rules enforcement and may be amended at any time by the Board of Directors of the Association (the “Board”). Should any provision of this Policy conflict with the Declaration, the Declaration shall apply. As defined in the Declaration, Rules and Regulations means “*any instruments, however denominated, which are adopted by the Board or the Members of the Association for the regulation and management of Elk Springs, including any amendments, supplements or updates to those instruments*” and include, but not limited to, the Declaration, the Bylaws, the Articles and Policies which may be issued by the Board from time to time. All Unit Owners are encouraged to become familiar with the Rules and Regulations which may be found on the Documents tab on the Association’s website at www.elkspringshoa.com

Unit Owners purchased property in Elk Springs subject to the Declaration and they expect the Rules and Regulations to be enforced in order to maintain and enhance property values within the community. The purpose of this Policy is to:

- (a) promote community awareness and support of the Rules and Regulations through fair and consistent enforcement;
- (b) provide guidelines for Unit Owners to self-police compliance with the Rules and Regulations; and
- (c) provide a structure for administering enforcement action in the event there is noncompliance on the part of any Unit Owner or Occupant.

The enforcement process adopted by the Board is designed to:

- (a) encourage Unit Owners and Occupants to understand the Rules and Regulations in order to avoid noncomplying activities;
- (b) give Unit Owners and Occupants opportunities to correct noncomplying incidents before enforcement actions are taken; and

(c) provide Unit Owners and Occupants opportunities to appeal any adverse action taken to enforce the Rules and Regulations.

It is the intent of the Board to administer this policy with total consistency throughout the community.

The Board has assigned the responsibility for administration of this Policy to the Association's Property Manager. The Property Manager will be responsible for identifying noncomplying incidents and following the enforcement process as outlined below. The Property Manager will also be responsible for completing and maintaining the Unit Owner Violation Worksheet (included in this Policy) which will provide documentation of efforts to enforce compliance with the Rules and Regulations.

Enforcement of Rules and Regulations:

The Property Manager will inspect the community twice a week and serve as a proactive on-site "eyes on the Property" to ensure a high quality appearance of the Property as well as compliance with the Rules and Regulations.

In addition, a Unit Owner or group of Unit Owners may bring an alleged violation of the Rules and Regulations to the attention of the Property Manager. A Unit Owner or group of Unit Owners must state in writing to the Property Manager any alleged violation of the Rules and Regulations. Such communication must include the name of the person or persons making the complaint as well as the date and approximate time of the alleged violation. The person or persons making the complaint may be called to testify if a Violation Hearing is determined to be necessary. The requirement for a written statement is waived in the case of a violation that poses immediate danger to the community as described below.

In the event that the Architectural Review Committee (the "ARC") believes a violation of the Design Requirements and Guidelines (the "DRG's") has occurred, and the ARC is not able to achieve a consensual resolution under the provisions of the DRG's, the ARC shall submit a Complaint to the Property Manager stating the alleged violation. Upon receipt of such Complaint, the Property Manager shall issue a Notice of Violation Hearing and the procedures outlined below shall be followed.

In the case of an alleged violation that poses an immediate or substantial threat to the health, safety or welfare of the community or an individual, the Unit Owner or group of Unit Owners who witness such threat shall verbally contact the Garfield County Sheriff or other law enforcement as soon as possible. Such violations include, but are not limited to, the following:

- (a) Discharge of a firearm,
- (b) Fireworks or fires of any kind on common areas or open space without the specific written pre-authorization of the Board,

- (c) Fireworks or open fires of any kind, except in a contained charcoal unit or contained gas or patio heater,
- (d) Motorized vehicles operated off roadway surfaces onto banks, common area or open space without the specific written pre-authorization of the Board which can only be given for work purposes,
- (e) Excessive speeding and reckless driving, or
- (f) Aggressive behavior causing bodily harm by a dog loose in the community.

Notification Procedures:

The Property Manager will notify the Unit Owner and Occupants in a series of three communications as follows:

a. Verbal Notification which will serve as an initial factfinding process concerning whether the alleged violation actually occurred and whether the Unit Owner and Occupants charged with the violation (the “Respondent”) is the one who should be held responsible for the violation. The goal of the verbal notification is to achieve a consensual understanding and resolution of the alleged violation.

b. If the violation is not corrected within a reasonable time depending on the nature of the noncompliance, a written notice, in English and in any language that the Unit Owner has indicated a preference for correspondence and Association notices, of the violation (“Written Notice of Violation”) and the applicable time period for cure will be issued by the Property Manager to the Respondent as follows:

In the case of any alleged violation that the Property Manager reasonably determines threatens public safety or health, the Property Manager shall provide the Unit Owner with a Written Notice of Violation informing the Unit Owner that the Unit Owner has seventy-two (72) hours to cure the violation or the Association may fine the Unit Owner and/or initiate legal action. In the case of any alleged violation that the Property Manager reasonably determines does not threaten public safety or health, the Property Manager shall provide the Unit Owner with a Written Notice of Violation informing the Unit Owner that the Unit Owner has thirty (30) days to cure the violation or the Association may fine the Unit Owner and/or initiate legal action. If, after an inspection of the Unit, the Property Manager determines that the Unit Owner has not cured the violation within the applicable cure period, the Property Manager may impose fines against the Unit Owner every other day and may take legal action against the Unit Owner for the violation, except the Association shall not pursue foreclosure based on fines alone.

c. If, after the verbal notification and the Written Notice of Violation, the Unit Owner denies the violation verbally or in writing to the Property Manager, the Property Manager will send a Notice of Violation Hearing to the Respondent stating the nature of the violation (the “Complaint”) and the date, time and place of a hearing before the Board. The Notice of Violation Hearing shall be served by personal delivery to the Unit

Owner and/or Occupant or by Certified U.S. Mail with return signature receipt, addressed to the last registered address of the Unit Owner and/or Occupant as contained in the Association's records. Any notice personally delivered shall be deemed received on the date of delivery and any notice shall be deemed received on the fifth day following the date of mailing. The hearing date shall be no earlier than ten (10) days following the date on which the Notice of Violation Hearing is given to the Respondent. Unless otherwise determined by the Board, all Violation Hearings shall be open to all Unit Owners and shall be noticed on the community bulletin board at the mailboxes at least two days before the hearing.

If the Unit Owner has not denied the violation verbally or in writing to the Property Manager to initiate a hearing, or simultaneously with noticing a hearing and after inspection within seven days after the end of the applicable cure period, or after inspection after notice of cure received by a Unit Owner, the Property Manager determines the violation has not been cured, the Property Manager shall fine the Unit Owner if a violation that is a threat to public health or safety is uncured, or, for a violation that is not a threat to public health or safety, through certified mail, return receipt requested, provide the Unit Owner with a second Written Notice of Violation describing the on-going violation and informing the Unit Owner that the Unit Owner has a second thirty (30) days to cure the violation, or the Association, after conducting an inspection within seven (7) days of the end of the second thirty-day cure period and determining that the Unit Owner has not cured the violation, may fine the Unit Owner every other day and/or may take legal action. The total amount of fines imposed for each violation may not exceed five hundred dollars (\$500.00). The Association shall not pursue foreclosure based on fines alone.

Once a Unit Owner cures a violation, the Property Manager shall notify the Unit Owner, in English and in any language that the Unit Owner has indicated a preference for correspondence and Association notices, that the Unit Owner will not be further fined with regard to the violation, and of any outstanding fine balance that the Unit Owner still owes the Association. Any repetitive violations that are the same or similar in nature shall be treated as one violation, and shall not require the Property Manager to provide new notice and cure periods to the Unit Owner before imposing fines or initiating legal action.

On a monthly basis and by first-class mail, and if the Association has the relevant e-mail addresses, by email, the Property Manager or other designated agent of the Association shall send to each Unit Owner who has any outstanding balance owed to the Association an itemized list of all assessments, fines, fees and charges that the Unit Owner owes to the Association, and such list shall be sent in English or and in any language that the Unit Owner has indicated a preference for correspondence and Association notices, to the Unit Owner and to any designated contact for the Unit Owner.

Violation Hearing:

The Board shall hear and decide cases set for hearing pursuant to this Policy. The Board may appoint an officer or other Unit Owner to act as the Presiding Officer at any hearing. Each hearing shall be conducted by the Board itself or by a subcommittee of the Board whose members do not have any direct personal or financial interest in the outcome of the hearing. A person is deemed not to have a direct personal or financial interest if he/she will not receive any greater benefit or detriment from the outcome than will the general membership of the Association. Any Board member who is incapable of objective and disinterested consideration on any Violation Hearing shall disclose such to the President of the Board prior to the hearing on the case or, if advance notice is not possible, disclosure shall be made at the hearing and the Board member shall be disqualified from all proceedings with regard to the hearing. If disqualification of any Board member(s) results in an even number of remaining Board members eligible to hear the case, the Presiding Officer may appoint an Association member, in good standing, to serve as a voting member of the hearing board.

Each hearing before the Board shall occur at the scheduled date, time and place, unless the Respondent has failed to respond or appear at the hearing. Continuances may be granted by the Presiding Officer for good cause. At the beginning of each hearing, the Presiding Officer shall explain the rules, procedures and guidelines by which the hearing shall be conducted and shall introduce the case before the Board by reading the Written Notice of Violation and Notice of Violation Hearing. The Respondent shall have the right to appear at the hearing in writing and/or in person, be represented by counsel at the Respondent's sole expense, present any relevant evidence and witnesses and cross-examine any witness testifying against the Respondent. The Board may: (a) exercise its discretion as to the specific manner in which a hearing shall be conducted; (b) question witnesses and review evidence; and (c) act as it may deem appropriate or desirable to permit it to reach a just decision. Neither the Unit Owner or group of Unit Owners or Board Committee who filed the Complaint or the Respondent must be in attendance at the hearing, but are encouraged to attend.

If the Respondent does not appear but a written response is filed, the Board shall render its decision based on the information contained in the Complaint, the written response of the Respondent, and any other documents prepared or maintained by the Property Manager.

If neither an appearance or a written response is made by the Respondent, 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 impose the sanctions provided for therein.

Decision by Board:

After all testimony and other evidence has been presented to the Board at a hearing, the Board shall render its decision(s), taking into consideration all of the relevant facts and

circumstances. If a majority of the Board finds that no violation of the Association's Rules and Regulations has occurred, then a Notice of Decision shall be issued dismissing the Complaint. If, on the other hand, a majority of the Board determines that a violation of the Association's Rules and Regulations has occurred, and that the Respondent is the responsible party, the Notice of Decision shall identify the violation(s) that occurred and set forth the applicable fine, required corrective action or other applicable enforcement actions. If the Board does not inform the Respondent of its decision at the time of the hearing, or if no hearing is held, the Board will provide a Notice of Decision to the Respondent's address of record via certified U.S. mail with return receipt requested within five (5) days after the decision is made.

In cases that require corrective action, the Board will provide, along with the Notice of Decision, a Requirement of Corrective Action including the time frame for compliance which shall be ten (10) days unless a longer period is specified.

The Respondent shall comply with the decision of the Board or the matter shall be turned over to the Association's attorney for legal action.

Fine Schedule:

The ARC, Property Manager and Board shall have authority to assess fines or order other enforcement action in accordance with Association governing documents. In the event of a dispute regarding fines or any enforcement action, final authority to assess fines or order other enforcement action shall lie solely with the Board. Fines for certain violations of the Association's Rules and Regulations are included in separate Policy and Procedures issued from time to time by the Board. The Design Requirements and Guidelines (the "DRG's") include a separate schedule of fines for violations of the DRG's. For any policy that has a daily fine, the fine shall be assessed every other day in accordance with this Policy and current Colorado law. In addition, the fine amount assessed for each violation shall not exceed \$500 in order to comply with current Colorado law even if stated otherwise in a separate Policy and Procedure or in the DRGs. For all other violations not addressed in a separate Policy and Procedures and the DRG's, the Association hereby adopts the following fine schedule:

(a) Any violation of the Association's Rules and Regulations except a violation of Section 3.19 of the Declaration, as set forth below, is subject to a \$500 fine if not cured after the requisite notice and cure period. No additional fine shall be imposed during any second requisite notice and cure period. Appropriate legal action shall be initiated if the violation is not cured after all required notice periods. Each offense shall be treated as a separate violation.

(b) Certain violations of the Association's Rules and Regulations require corrective action by the Respondent. If the corrective action is not completed in the time frame specified for compliance in the Notice of Decision and Requirement of Corrective Action a \$500 fine will be imposed. The Board will initiate legal action no earlier than thirty

(30) days after the date set for compliance in the Notice of Decision and Requirement of Corrective Action.

(c) In cases involving construction of Improvements, Landscaping or Modification to a Unit not approved by the ARC, the Board shall issue a Stop Work Order and the Respondent shall have fifteen (15) days from the date of Notice of Decision and Requirement of Corrective Action to initiate the architectural review process and pay all review fees and deposits required to complete the project or a fine of \$100 for every other additional day of delay up to \$500 will be imposed. Each day work continues in violation of the Stop Work Order a fine of \$500 will be imposed.

Fines for Violation of Section 3.19 of the Declaration Regarding Rental of Units or Improvements:

Notwithstanding anything to the contrary herein, the following fines shall apply to violation of Section 3.19 of the Declaration, which prohibits short term rentals of Units or Improvements.

A Unit Owner violates Section 3.19 upon the execution of a short term lease, by taking a deposit for a short term rental, by taking any remuneration for a short term rental or by committing to reserve a Unit or Improvement for a short term rental.

Any violation of Section 3.19 of the Declaration is subject to a \$500.00 fine for each offense, along with initiation of any appropriate legal action.

Each subsequent short-term lease to a the same or a different tenant by the same Unit Owner shall constitute a separate offense.

Legal Action and Attorney Fees:

“Legal action” as used herein shall consist of contacting an attorney and incurring legal expense for any enforcement action under any of the Association’s Rules and Regulations. Legal actions include, without limitation, proceedings to enforce corrective actions, stop work orders, gain access, collect fines levied hereunder, collect overdue assessments or other sums, seek injunctive relief or file liens on real property. Legal actions also include all work performed by the Association attorney to contact a Respondent and resolve the dispute prior to the initiation of former legal proceedings and whether or not any such formal proceedings are actually initiated. All reasonable attorney’s fees and costs incurred by the Association in any legal action to enforce any of the Association’s Rules and Regulations shall be assessed to the Unit Owner who is the subject of the legal action.

Habitual Offenders and Continuing Violations:

A Unit Owner who accumulates more than three (3) violations within a twelve (12) month period will be deemed to be a habitual offender. For habitual offenders, continuing violations, or violations which have an indefinite commencement or

termination date, the Board may impose such additional fines as are deemed reasonable by the Board and as are permissible by law.

Willful and Wanton Violations:

In the event of a determination by the Board of a willful, wanton, or flagrant disregard for the provisions of the Association’s Rules and Regulations, or based on the severity of the violation, the Board may impose such additional fines as are deemed reasonable by the Board and as are permissible by law.

Responsibility for Actions of Occupants:

Unit Owners shall at all times be responsible for the actions of the Unit Occupants. In the event that an Occupant violates the Association’s Rules and Regulations, and a fine is imposed, the fine shall be assessed against that Unit Owner.

Other:

Nothing contained in this Policy shall preclude any other remedies available to the Association or any Unit Owner in law or equity, under or pursuant to Colorado law or the Association’s Rules and Regulations.

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

The provisions of this 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.

PRESIDENTS CERTIFICATION:

The undersigned, being the President of the Elk Springs Homeowners Association, Inc. Board of Directors certifies that the foregoing Policy and Procedures for the Enforcement of Rules and Regulations, Hearing Procedures and Schedule of Fines was adopted by the Board of Directors at a duly called and noticed meeting of the Board of Directors held on September 13, 2022 and in witness thereof, the undersigned has subscribed his name.

/s/ Patrick Fitzgerald

President, Elk Springs Homeowners
Association, Inc. Board of Directors

September 13, 2022

Date Adopted

Elk Springs Homeowners Association, Inc.
UNIT OWNER VIOLATION WORKSHEET

Property Address _____ Lot ____ Filing _____

Unit Owner(s) (Respondent) _____

Contractor/Tenant _____

Complaint: Date _____ By _____

Issue _____

Investigation: Date: _____ By _____

Finding _____

Is Complaint Valid: Yes _____ No _____

Notes: _____

Verbal Notification Date _____ Resolved: Yes _____ No _____

Written Notice of Violation:

Date Sent _____ By Hand Delivery ___ Certified Mail _____

(certified mail required for 30 day notice)

Date to Correct Violation _____

(72 hrs for threat to public health/safety; 30 days for non-threat to public health/safety)

Resolved: Yes _____ No _____

(if no, may now impose fines and take legal action for threat to public health/safety; may impose fines for non-threat to public health/safety)

Second Notice of Violation (non-threat to public health/safety)

Date Sent _____ By Hand Delivery ___ Certified Mail _____

(certified mail required for 30 day notice)

Date to Correct Violation _____

(2nd 30 days for non-threat to public health/safety)

Resolved: Yes _____ No _____

(if no, may impose fines and/or take legal action for non-threat to public health/safety)

Notice of Violation Hearing:

Date Sent _____ By Hand Delivery ___ Certified Mail _____

Date, Time and Place of Hearing _____

(Hearing date shall be no earlier than 10 days following date on which notice is given to Respondent)

Date Notice posted on community bulletin board _____

Notice of Decision: Dismissed: Yes _____ No _____

Violation: _____

Fine: _____

Date Respondent Notified: _____ Certified Mail _____

Hand Delivery _____

Is Corrective Action Required: Yes _____ No _____

Notice of Corrective Action:

Date Sent _____ Certified Mail _____ Hand Delivery _____

Date Corrective Action Required _____

Corrective Action Resolved _____

Date Accounting Notified to Bill for Fine _____

Date Fine Paid _____

Legal Action: Demand Letter _____ Lien Amount _____

Record Lien _____ Reception No . of Lien _____

Attorney's Fees/Costs _____

Total Due _____ Payment _____

Release Lien _____ Reception No _____