

**SEAL BEACH MUTUAL NUMBER FIVE**

**Mutual Operations – ENFORCEMENT AND FINE RULES**

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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 Bylaws currently in effect for this Association and are of equal hierarchy to the Occupancy Agreement.

**ARTICLE 1: ENFORCEMENT AND FINE POLICIES**

**1.1 Enforcement Procedure.**

a. Report Violation: Any Resident, Member, Director, manager, or rules enforcement personnel claiming a violation occurred must complete, sign, and submit an Alleged Violation Report (Exhibit A to these Rules) to the Board of Directors at a Board meeting, or to the Association’s manager during regular business hours. No anonymous Alleged Violation Reports will be considered unless the information can be independently verified.

b. Determination of Merit: The Board must determine, in an executive session meeting, if there is alleged violation has merit and, if so, give notice as provided in the next paragraph. If the Board does not find merit it must indicate why action was not taken in the executive session minutes.

c. Give Notice of Alleged Violation: Following a determination of merit as specified above, the Association will send a Notice of Intent to Impose Discipline to the Member (Exhibit B to these Rules) 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 10 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 is required.

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.

**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.

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- 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 question the opposing party and the opposing party's witnesses. Witnesses providing testimony (orally or in writing) must appear and be subject to questioning. Each witness (but not the alleged violator or complaining party) must testify outside the presence of other witnesses.
- iii. Each party may make a final statement, orally or in writing, after hearing all evidence.
- iv. Formal rules of evidence will not apply, and, subject to any other requirements in these rules, all evidence properly submitted 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 a complaining party chooses not to attend the hearing and/or be subjected to questioning, the Board may not automatically find the alleged violator to be in violation. The complaining party, including the Board, must still present or possess sufficient proof of the violation. A non-attending alleged violator may present other evidence or witnesses to support their case.

d. Additional Hearing Rules. The Board may specify other reasonable rules for the hearing, provided the alleged violator can (1) confront and question the complaining party and any witnesses (if their personal knowledge is necessary to prove the claim), (2) review any other corroborating evidence of the violation, and (3) testify and present evidence in their 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. The Board will discuss, deliberate, and decide what action to take, if any, or if the matter should be taken under submission.

g. Take Matter Under Submission. After considering the evidence presented at the hearing and during deliberation, the Board may take the matter under submission to allow (1) the presentation and consideration of additional documentary or other evidence, (2) further investigation to be conducted, and/or (3) additional time for deliberation by the Board. If taken under submission, the Board must schedule another executive session meeting within 35 days after the original hearing at which the Board will resume deliberation.

h. Take Action: If the Member is found to have violated the governing documents, the Board may take any appropriate action allowed under the governing documents or the law, such as:

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- i. Sending a “cease and desist” letter;
- ii. Imposing one or more monetary penalties (fines);
- iii. Allowing the Member, a reasonable period of time to correct any ongoing violations, such as architectural or nuisance violations, and, in the Board’s discretion, imposing daily fines which may automatically begin, without further notice or hearing, if the Member does not (1) comply within the time allowed or (2) request and be granted additional time to comply;
- iv. Correcting (or causing to be corrected) the violation. Then, after a further notice and hearing, imposing a reimbursement assessment upon the Member for the costs and expenses of doing so, including attorneys’ fees, when allowed by law;
- v. Suspending membership privileges, such as recreational common area use rights (but not member voting rights), effective no sooner than five (5) days after the notice of disciplinary action required by Civil Code §5855 (c) or any successor statute;
- vi. Initiating Internal Dispute Resolution and/or Alternative Dispute Resolution in the manner provided by the Association’s governing documents and the law;
- vii. Seeking any legal remedy, including, without limitation, seeking a restraining order and/or injunctive relief, or imposing a lien and/or foreclosing on the Member’s property, where allowed by law;
- viii. Taking no disciplinary action when circumstances warrant. The justification for taking no action in response to a violation must be noted in the executive minutes and the Member’s disciplinary file, if any.

i. Give Notice of Decision: The Member, but not the complaining party, must be notified of any disciplinary action taken by the Board of Directors within 15 days following the action. If no disciplinary action is taken, no notice to any party is required, but such notice may be given to any party if circumstances warrant and doing so does not violate the privacy of the alleged violator.

### 1.3 Monetary Penalty (Fine) Schedule and Policies.

If the Board finds a violation of the governing documents, a monetary penalty (fine) of up to \$200 may be imposed for each separate violation of that provision, subject to the following additional provisions:

- a. For violations which are not continuous:
  - i. If a member violates the same provision of the governing documents on two separate occasions within any 12-month period, the Member will be subject to a monetary penalty (fine) of up to \$400 for the second violation.

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- ii. If the Member violates the same provision three or more times within any 12-month period, the Member will be subject to monetary penalties (fines) for the third and subsequent violations of up to \$600 each.

b. For continuous violations, such as architectural, ongoing nuisance, rental violations, or otherwise:

- i. Continuous violations will be considered a violation every day from the first day of the violation until remedied in full for at least 30 days.
- ii. Continuous violations are subject to a monetary penalty (fine) of up to \$100 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 \$3,000 per calendar month.
- iii. Continuous Violation Example 1: A homeowner engages in short-term rentals in violation of the governing documents and the Association imposes a continuous fine of \$100 per day after notice and a hearing. The homeowner continues the violation the following week by renting over four-day periods once per week for four consecutive weeks in a single calendar month. The short-term rental violation occurred on 16 nonconsecutive days in a single calendar month and the Association may properly impose, without further notice or hearing, monetary penalties of \$1,600 upon confirmation of the violations.
- iv. Continuous Violation Example 2: A homeowner smokes on his/her patio in violation of the governing documents and the Association imposes a continuous fine of \$100 per day. The homeowner stops smoking for a week, but the resumes five days per week for three weeks for a calendar month. Then the homeowner goes on vacation for 30 days before returning and resuming smoking. The smoking violation occurred on 15 non- Policies consecutive days for which the Association may impose, without further notice or hearing, monetary penalties of \$1,500 upon confirmation of the violations. However, after the 30-day lapse in violations, the matter is deemed fully remedied, and a new notice and hearing must be given for any subsequent violations.

c. Multiple violations, whether non-continuous or continuous, 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).

d. 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.

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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, 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).

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**ALLEGED VIOLATION REPORT**

Date of Report: \_\_\_\_\_

Person Making Report

Name: \_\_\_\_\_

Complainant Address: \_\_\_\_\_

Phone No: \_\_\_\_\_

2. Time, place, and nature of alleged violation (to the extent known) Date: \_\_\_\_\_

Time: \_\_\_\_\_ Location: \_\_\_\_\_

Nature of Violation: \_\_\_\_\_

3. Description of Alleged Violator (if known) Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Address: \_\_\_\_\_

4. Additional Witnesses (continue on back as needed)

Name: \_\_\_\_\_

Address/Phone: \_\_\_\_\_

Name: \_\_\_\_\_

Address/Phone: \_\_\_\_\_

5. Other Evidence (Photographs, Documents, Etc.) Supporting the Violation (continue on back as needed)

6. Specific Governing Document Violated (Cite exact provision(s) of Occupancy Agreement, Bylaws, Rules or Regulations violated)

7. Original Complainant The person making this complaint acknowledges that he or she must appear as a witness at any formal hearing or the Board may refuse to consider the alleged violation, unless the violation can be independently corroborated.

\_\_\_\_\_ (Signature) Exhibit A to

Enforcement and Fine Policies Adopted on November 21, 2022 - Page 7 Enforcement and Fine Policies NOTICE OF INTENTION TO IMPOSE DISCIPLINE To Member:

\_\_\_\_\_ Please be

advised that you are given notice that the Board of Directors will hold a hearing on:

\_\_\_\_\_ (Date)

\_\_\_\_\_ (Time)

\_\_\_\_\_ (Place)

\_\_\_\_\_ to consider the imposition of a monetary penalty

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(fine), suspension of membership privileges, such as the right to use recreational common area, but not member voting rights, or other permissible discipline or action against you concerning an alleged violation of the Association’s governing documents, that is:

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\_\_\_ You may attend the hearing and be heard orally or in writing before the Board of Directors and to present any witnesses or other evidence on your behalf. For any written statement to be considered, the author must be present to testify and be questioned about the statement. The hearing will be held in executive session whether you are present or not and whether you contest the alleged violation or not. Please acknowledge your receipt of this notice and indicate, by checking the box indicating whether you will contest the alleged violation or not. Very truly yours, BOARD OF DIRECTORS I acknowledge receipt of this notice and:  I do not oppose the alleged violation.  I oppose the alleged violation. Exhibit B to Enforcement and Fine Policies

**Document History**

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