

WHISPER MOUNTAIN ASSOCIATION RESOLUTION BY THE BOARD OF DIRECTORS

ENFORCEMENT & FINE RESOLUTION

Pursuant to the authority contained in the Arizona Revised Statutes and the Governing Documents of the Association, the Board of Directors of Whisper Mountain Association hereby adopts the following resolution by unanimous consent for and as the actions of the Whisper Mountain Association, during the duly noticed Open Board Meeting on July 20, 2020.

RESOLVED: the following Resolution is Effective November 1, 2020 and rescinds all previous Enforcement and Fine Schedules and/or Policies.

The scope and intent of this resolution is to apply uniformly to all members of the Association. The Board shall, at all times in enforcing the provisions of the Governing Documents, remain fair and impartial, and treat all Owners in the same manner as any other Owners.

Reporting Violations to the Association:

- (1) Owners or residents within the community may report alleged violations only if they personally observed the alleged violation.
- (2) Alleged violations are to be reported in writing to the Association's Manager, or if no Manager, then to the Board of Directors.
- (3) The complaint must be detailed and provide the provisions of the Governing Documents claimed to be violated, the time, date, and place of the violation, and any witnesses to the violation.
- (4) The Board or its authorized agent(s) should review the written complaint and supporting documents, if any.
- (5) If the Board or its authorized agent(s) determines that the complaint is valid and sets forth a valid violation of provisions of the Governing Documents, then the Board shall send a notice to the Owner.
- (6) Notwithstanding reports from Owners, the Board or its authorized agent(s) may also conduct its own inspections and send notices of violations to Owners.
- (7) Per Arizona Law (**A.R.S. §33-1242** and **A.R.S. §33-1803**), any complaint lodged with the Association will NOT remain anonymous. Your first and last name will be disclosed to the violator upon request.

Notice of Violation: The Notice of Violation shall be sent to the Owner, even if it is the Owner's tenants, guests, or invitees that are responsible for the violations of the Governing Documents. The Notice shall be sent to the address registered with the Association, and if none, to the property address of the Association for that Owner. The Notice should be delivered by first class mail. The Notice should state the details of the violation as outlined in the complaint and revealed by the Board's review and investigation, if applicable. The Notice should also provide the Owner an opportunity for a hearing before the Board to refute the complaint. An Owner has a duty to respond in writing within fourteen (10) days to request a hearing. If the Owner does not respond timely or in writing, then the Owner is deemed to have admitted the facts set forth in the Notice, and the Board may enforce the provisions in accordance with this Resolution.

Fine Schedule for Violations: The Board adopts the following fine procedure and accompanying amounts:

1. **First Notice of Violation:** A letter will be sent to the Owner of the property outlining the violation. In the event that the Owner of the property is identified as an absentee Owner, a copy of the violation letter may also be sent to the tenant at the property address. The Owner will be given fourteen (14) days to bring the violation into compliance. The First Notice shall include a warning that if the violation is not cured within fourteen (14) days that the fine policy will be followed. This letter shall also state that the Owner may petition the Department of Real Estate pursuant to ARS 32-2199.01.
2. **Second Notice of Violation:** The Association will issue a second Notice if the Owner has not complied with the first Notice, or if the violation has returned or has been repeated. The second Notice will inform the Owner that if the violation is not cured within fourteen (14) days, that a Monetary Penalty will be imposed. The Owner will also be responsible for any certified letter processing fees.
3. **Third Notice of Violation:** The Association will issue a second Notice if the Owner has not complied with the first Notice, or if the violation has returned or has been repeated. The second Notice will inform the Owner that a Monetary Pen
4. ty, in the amount of **\$25.00**, has been imposed. This letter shall also tell the Owner that if the violation is not cured within fourteen (14) days that a fine will be assessed. The Owner will also be responsible for any certified letter processing fees.
5. **Fourth Notice of Violation:** The Association will assess an Additional Monetary Penalty, in the amount of **\$50.00**, if the Owner has not corrected or removed the violation as stated in the time frames in the previous notices, or if the violation has returned or has been repeated. The Owner will also be responsible for any certified letter processing fees.
6. **Additional Monetary Penalties:** After the imposition of the Initial Monetary Penalty and the Additional Monetary Penalty, another penalty, in the amount of **\$100.00** (the Maximum Additional Monetary Penalty), may be imposed upon subsequent inspection, if the Owner has not corrected or removed the violation, or if the violation is repeated or has returned. Inspections will be conducted to coincide with the terms of the notices. The Owner will also be responsible for any certified letter processing fees.

Additional Remedies. The Association has the right, without proceeding through the steps outlined in the fine schedule above, to exercise its legal remedies against an Owner who is in violation of provisions in the Governing Documents. Nothing in this Resolution prohibits the Association from seeking immediate redress, filing an action for any reason authorized by law, while also seeking injunctive relief for violations that are continuing or that affect the health, safety or welfare of the Community. Subject to the Governing Documents, the Association shall be entitled to its attorney fees and costs to compel compliance, regardless of whether a lawsuit is filed.

Violations that threaten the health, safety and welfare of homeowners and residents, such as drug use and sales, discharging firearms, arson, vandalism and any other violation that the Board deems to be of an egregious nature will be fined at **\$200.00 to \$500.00** per occurrence.

Should a period of time of at least 90 days lapse between violation letters of the same offense, the next letter will be a First Notice again.

Hearings Before the Association: If the Owner timely requested a hearing before the Board in writing, the following should govern the hearing before the Board:

(1) Alleged violators are entitled to notice and opportunity for a hearing on the merits before a fine is imposed upon them by the Board

(2) Notice of violations setting a fine may set forth a date and time for the hearing or allow for the scheduling of a hearing.

(3) The hearing will be before the Board, with any “interested” board member disqualified to be a part of the hearing panel.

(4) At the hearing, the alleged Owner or the Owner’s designated representative and the Complainant may make an opening statement, present evidence and testimony, present witnesses and make a closing statement.

(5) Additional evidence and testimony may be presented by an officer, Board Member or the Association’s Manager, if any, and/or any person involved in the performance of the investigation of the alleged violation.

(6) Neither the Complainant nor the alleged violator is required to be in attendance at the hearing.

(7) The presiding officer may also impose other rules of conduct as may be appropriate under the circumstances.

(8) Unless otherwise requested by the Owner, the hearing may be open or closed to attendance by all Owners.

(9) The hearing must be fair and impartial to the Owner accused of the violation, as outlined above.

(10) The Board may render its decision in writing within 30 days, or a longer period as the Board may set.

(11) In its decision, the Board may, at its sole discretion, impose the fine, waive all or a portion of the fine, or condition waiver or partial waiver of the fine.

(12) Failure to strictly follow the hearing procedures is not grounds for appeal of the Board's decision, absent a showing of denial of due process.

Non-Waiver: The failure of the Association to enforce its Governing Documents does not constitute a waiver of the right to enforce the Governing Documents in the future.