

## **ENFORCEMENT PROCEDURE**

The following enforcement procedures were adopted by resolution of the Board of Directors of the Overlook at Cherry Creek, Aurora, Colorado ("the Association") pursuant to Colorado law at a regular meeting of the Board.

### **RECITALS:**

- A. Pursuant to Colorado Revised Statute ("C.R.S.") 38-33.3-209.5 (1)(b)(IV) the Association is required to adopt a policy concerning the enforcement of the Association's governing documents.
- B. C.R.S. 38-33.3-302(1)(k) allows the Association to levy reasonable fines for violations of the declaration, bylaws, and rules and regulations ("the Governing Documents") provided notice and an opportunity to be heard is given to the Member prior to the fine being imposed.
- C. C.R.S. 38-33.3-302(1)(d) authorizes the Association to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Common Interest Community. In the event the Association prevails with its claim C.R.S. 38-33.3-123 allows the Association to seek reimbursement of its reasonable attorney fees and costs.
- D. For the benefit and protection of the Association and its Members, the Board deems it desirable to establish and operate by procedures to insure due process in cases where an Owner or tenant, their family Members, their guests or invitees are alleged to have violated provisions of the Governing Documents, other than failure to pay assessments.

### **THEREFORE, IT IS RESOLVED:**

That the following procedures shall apply to a violation of the Declaration, Bylaws, or the Rules and Regulations. However, this resolution shall not apply to those sections of the Declaration and Bylaws concerning payment and collection of assessments.

#### **1. Informal Resolution of Violation**

Any Owner, Owner's tenant, or agent of the Association may directly request that an Owner or resident cease or correct any act or omission, which appears to be in violation of the Governing Documents. It is the preference of the Board that residents of the community attempt informal resolution prior to seeking formal resolution.

In the event the perceived violation is also a violation of Federal, state, or local laws or regulations, the Board may request the complaining resident to contact the appropriate governmental entity to report the perceived violation.

In some cases the Association may be more reluctant to institute litigation than is the complaining Member. The Association would like this opportunity to advise the

Members that any person subject to the Declaration and the Colorado Common Interest Ownership Act may institute legal or equitable proceedings to enjoin violations of the Declaration or the Act, and if successful, the complaining party is entitled to seek reimbursement of their reasonable attorney fees and costs.

## **2. Mediation**

The Association encourages residents of the community to mediate with their neighbors on issues that impact the party's involved but not necessarily other Members of the community. The Association intends to use mediation as a tool to address complaints alleging violations of the Association's governing documents; the decision of whether or not to employ mediation will be within the reasonable discretion of the Board of Directors.

## **3. Formal Resolution of the Violation**

A. The Board or its agent may initiate Formal Resolution of violations upon observation of a violation, no written notice of violation is necessary.

B. Residents of the Association may initiate Formal Resolution of violations by filing a written notice of violation with the Association via mail or hand delivery to its management company, in care of the Board. Said notice of violation must clearly indicate the specific nature of the violation, the date, time and location of the violation, the witnesses of the alleged violation, and the name(s) or Unit number of the violator(s). At this time, the name of the Owner(s) or resident(s) making the complaint will not be divulged to persons other than the Board of Directors and its agents.

C. If within the discretion of the Board, the written notice does not allege facts necessary to constitute a violation, the complainant will be notified in writing as to why no action was taken. The complainant may request a reconsideration of the complaint at a subsequent meeting of the Board. The complainant is required to attend this meeting.

D. If the Board, having reviewed the allegations contained in the notice believes a violation of the Association's governing documents has occurred, the accused individual, or the Owner if the accused individual is a tenant, family Member, guest, or invitee, will be notified in writing that a complaint has been made citing the nature, date, time and location of the violation. The person charged shall have twenty (20) days from the receipt of this notification to request a hearing with the Board. Failure to respond to such notification may be construed as an admission of the violation, at which point the Board may levy a reasonable fine against the Owner(s) for the alleged violation.

E. If the Board, after the Owner has been provided with at least 15 days notice and the opportunity to be heard, determines the Owner, resident, guests or invitees have violated provisions of the Association's governing documents, the Board may suspend the Owner's voting rights, and the Owner's or resident's privileges to use the Common

Element facilities for up to 60 days for each infraction; written notice of the suspension shall be provided to the Owner or resident.

F. If the person charged with a violation responds requesting a hearing, a hearing shall be set and written notice of the date, time and place of hearing, together with a copy of the hearing procedures shall be provided to the accused.

G. The hearing procedures shall be as follows:

1. The Board, through its Chair, shall direct the proceedings at the hearing. The person charged, the person's representative, the other Members or residents may speak only after being recognized by the Chair.

2. The Chair will describe the specific provision of the declaration or rule or regulation, which is said to have been violated, including the date and place, or read the written complaint to the person charged.

3. The person charged shall be asked to admit or deny the charge. The person charged may speak for himself or may be represented by counsel throughout the hearing. Failure to respond or attend the hearing may be construed as an admission of the alleged violation.

4. If the charge is denied, the complaining witness or other witnesses having personal knowledge of the facts supporting the alleged violation shall be required to describe the details and circumstances giving rise to the violation of the Governing Documents at the hearing.

5. The person charged shall have the opportunity to confront each witness who testified against him, and offer a defense to the actions or omissions giving rise to the alleged violation of the Association's Governing Documents.

6. When all complaining witnesses have been heard, the person charged may make statements in rebuttal, and may provide witnesses in support of that position. The Chair may ask questions of each such witness in turn.

7. The Board shall have the opportunity to question any witness or involved parties if it so desires.

8. At the conclusion of the hearing, the Board shall discuss the statements and vote whether or not the person charged violated the provisions of the Association's Governing Documents. A majority vote shall control. The result of the vote shall be recorded in the minutes of the meeting, and announced to the person charged and the party or parties who filed the Complaint.

9. If the Board levies a fine, the Board shall provide written notice to the Owner of the fine and the date payment of the fine is due. In the event the Owner fails to pay the fine consistent with the notification, appropriate legal action may be initiated by the Board of Directors to collect the fine.

10. The Board of Directors must use reasonable discretion in levying fines in accordance with the severity of the violation. The following is a schedule of the presumptive fine range for ordinary violations of the Governing Documents:

First Violation	a warning letter
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Second Violation	up to \$25.00
Third Violation	up to \$50.00
Fourth and Subsequent	Up to \$100.00

**4. Miscellaneous Provisions:**

The Person obligated to pay the fine shall be the record Owner of real property subject to the Association's Governing Documents whether it is a natural person or a legal entity.

Continuing violations shall constitute a separate violation for each 24-hour period the violation exists.

Fines for violations of the governing documents will be imposed against the Owner and the real property subject to the Declaration.


Any and all money collected from such fines may be deposited in the Association's general operating fund.

In the event the violation is of a continuing nature or if the violation constitutes a threat to the health, safety, or welfare of the residents or the property within the community, the Association acting through the Board of Directors may institute an action in a court of competent jurisdiction seeking injunctive relief to abate the violation without proceeding through procedures set forth in 3(D), 3(E), or 3(F) above. Nothing in this paragraph constitutes an election of remedies nor precludes the Board from levying fines as set forth above while at the same time seeking injunctive relief for violations of a continuing nature or violations that affect the health, safety, or welfare of the residents or the property.

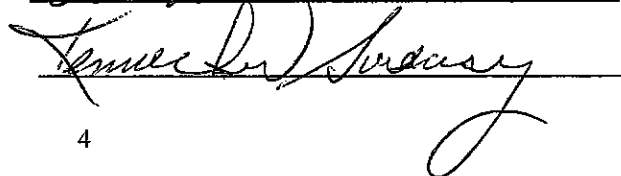
In the event it is determined the Association was the prevailing party in the suit the Association shall be entitled to seek reimbursement of its costs including reasonable attorney fees, court costs, and other legal costs; conversely, if it is determined the Owner was the prevailing party, the Owner shall be entitled to reimbursement of the same expenses and costs.

In the event a Court of competent jurisdiction finds a provision of this Enforcement Policy void or otherwise unenforceable, the other provisions shall remain in full effect.

Procedure adopted this 30<sup>th</sup> day of September, 2009 by Resolution of the Board of Directors of the Overlook at Cherry Creek.


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Juan Jacobo