

Ashbrook Condominiums Owners Association

Resolution Number 8 – Compliance Violation: Remedies and Formal Enforcement Procedures, Sanctions, Fees, Administrative Charges and Appeals

WHEREAS various Articles, including Article 3, Section 3.6 Powers and Duties, and Article 7, Section 7.5, Restrictions and Requirements Respecting Use of Condominium Property, of Bylaws for Ashbrook Condominiums Owners Association, a nonprofit corporation formed under the laws of the State of Oregon, provides for the Association to have authority to manage the affairs of the community and authorizes the Board of Directors of the Association to establish and promulgate rules and regulations;

AND WHEREAS, an intent of the CC&Rs is to protect the common interests of all owners by helping to preserve optimum property values and enjoyable living and to provide an organization that works on behalf of the community's common interests;

AND WHEREAS, the economic well-being of the Association is dependent on the timely payment by owners of all assessments, fees, and charges payable to the Association;

NOW THEREFORE, BE IT RESOLVED THAT apparent compliance violation issues within community shall be dealt with as follows:

- I. Observations made by the Association:** When the Association directly observes a violation, it will begin with V, below. No written complaints are required to be filed.
- II. Direct resolution preferred:** Owners disturbed by a neighbor's actions, or believing that a neighbor is in a compliance violation with a rule or regulation, are encouraged to express their concern with the neighbor. Most disturbances are believed to be unintentional and immediate resolution by responsible neighbors, if possible, is desirable and expected.
- III. Definitions:** In this Resolution, an activity that offends or potentially violates a rule or regulation will be known as a violation. The person purportedly doing this activity will be known as the Violator, and the owner filing the complaint will be known as the Complainant.
- IV. Written complaint:** If a resolution to the situation is not achieved through the initial direct discussion between the involved parties, or is recurrent, the Complainant may submit a signed, written complaint to the Association. This written complaint shall document the disturbance/violation created by which neighbor, on what date, time, and place. The complaint must describe the activity in enough detail that an objective person could comprehend the concern.

V. Association's initial response to a complaint:

- A. After receiving a valid, written complaint (see steps II, III & IV above) the Association, through its appropriate committee, empowered entity, or Board of Directors (*See Attachment One below for a description of Committees, Entities, and Board of Directors*) will usually make an effort to telephone the violating owner informing him/her of the compliance problem, offering assistance and information to help resolve the situation. Successful telephone contact includes voice mail messages. Multiple telephone calls will not be attempted.
- B. In addition to attempting to reach the violator by telephone, a written notice will be mailed via first class mail to the owner of record, regarding the issue and urging the violator to take action to resolve the complainant's concern. A copy of the written complaint will be provided to the violator. Additionally this notice may clarify time frames for substantial compliance to be evidenced and/or fines that may apply for non-compliance. Repeat compliance infractions and some other serious and/or hazardous situations, may not require advance notice before the Association takes steps to remedy a situation or assess a fine. In cases where a notice of violation is posted on the lot, there will be no notification opportunity of the offending party in advance by telephone.
- C. Each owner is responsible for providing correct current owner information, including phone numbers and mailing addresses, to the Association (through its Management Company, where lot owner records are maintained). Successful Violator notification is based on the date the telephone call is attempted or the notice is mailed first class, whether or not the owner's phone number and/or address is actually current and correct in the Association's records.

VI. In a situation where there is an **immediate threat to health, safety, or the environment**, the Association may elect to rectify the situation immediately, without notice, and charge the owner(s) for any and all costs incurred.

VII. Compliance violation sanctions and procedures: Unless specifically addressed elsewhere in the CC&Rs or prior exception has been granted¹ * ² the following sanctions and procedures shall be applied to situations where the Association finds a compliance violation exists.

¹ Such as, there may be extenuating circumstances where it would be reasonable for an owner to request a variation in time or activities that are covered by the CC&Rs and/or these Resolutions. If so, the owner must communicate in a timely manner with the appropriate Association representative. Under special circumstances, and on a case-by-case basis, the Association may issue permits for time extensions and/or schedule variations. However, owners cannot ignore the rules and then expect to have consideration given to their variations after the fact.

² The integrity of the Association's CC&Rs assumes even-handed compliance with the rules. Variations in applying the rules and policies will not establish a precedent.

- A. An initial Compliance Violation Notice will be given to an owner to correct a specified problem within seven (7) days.³
- B. If the problem has not been corrected by the eighth day, a fine of \$50 will be applied.
- C. On day ten, a daily fine of \$35 begins and continues daily until compliance is achieved.
- D. On the tenth day administrative charges⁴ will also begin.
- E. Day fifteen, the Association may correct the violation, but is not obligated to do so. If the Association corrects the situation, the owner is responsible for reimbursing all the costs to the Association. There is a minimum \$100 charge by the Association for correcting a matter.⁵
- F. Day twenty-five, the Association may refer the matter to the Association's attorney for legal action.⁶
- G. On day forty, the daily fine increases to \$50 for each day the Violation remains uncorrected.
- H. The above schedule will vary in cases where compliance is required in a shorter time frame.

VIII. Repeat Violators: Each repeat violation by the same owner, guest, contractor, vendor, etc., whether single or multiple locations and/or times, shall begin being fined without further notice, at the Day-#-10-Step above, with the \$35 daily fine plus administrative charges, and follow the same steps until the violation is rectified permanently.

IX. Appeal: If the owner does not agree with the issue as stated in the Compliance Violation Notice, that owner may file a written appeal, along with supporting documentation, as to why she/he is an exception to the stated rule, through the following levels:

³ The correction of a Compliance Violation Notice is based on all seven days of the calendar week and does not exclude weekends, holidays, absence, or unavailability of owners or their representatives.

⁴ Administrative charges relate to expenses incurred by the Association, including, but not limited to the cost of consultants, architects, engineers, Association Managing Agent, legal costs, notices, collections, managing a resolution to a problem and cost for contract work, materials, equipment rental, materials removal and disposal, towing and storage, vehicle mileage, office service and supplies, as well as other similar items and costs related to managing and correcting a violation or causing a problem to be cured.

⁵ Collection of fines and reimbursement for costs are governed by the Association's Assessment and Compliance Payment Policy, Declaration, Bylaws and policies of the Association.

⁶ Legal action typically leads to the matter being referred to the Association's attorney and resulting in correspondence, filing liens and notices, collections, filing court actions, and pursuing other legal rights and remedies available to the Association.

- Level 1.** Appeal the Compliance Violation Notice to the appropriate committee or administrative entity for the Association that has oversight responsibility in the area.
- Level 2.** Appeal the committee's decision to the Advisory Board/Transitional Committee, if such a body exists.
- Level 3.** Appeal to the Board of Directors, who makes the final decision.

Administrative and/or other costs associated with the appeal process shall be borne by the owner(s) filing the appeal. The process through these three levels shall always exhaust Level 1 before advancing to Level 2. The written appeal may request a personal appearance, but whether or not that is deemed necessary will be left up to the committee/administrative entity. This committee/administrative entity will attempt to determine a finding within 30 days, but that may not be possible as some committees, etc. only meet once or twice a year, and/or some situations may require additional time to evaluate, investigate, and/or to effect a solution. Also, at the discretion of the committee or entity, a matter may be decided without a formal meeting, but rather by using written materials, telephone calls and/or electronic communications to coordinate a discussion of the subject at hand.

Mediation or arbitration may also be used to resolve the issue.

X. Additional information relating to Compliance actions and charges by the Association:

- A. Owners making requests of the Association, where additional expenses for administration or other services may apply, must pay the Association for any administrative or other expenses involved in processing said request. The Association may not be able to foresee every expense made by owners and/or their representatives, so each item's related costs may be evaluated on a case-by-case basis at the time and/or after processing, and the Association fully reimbursed.
- B. Removal, storage and disposal of equipment, materials, and debris are the responsibility of the owner.
- C. Owners are responsible for informing contractors, business invitees, guests, and renters of the Association's CC&Rs, rules, and regulations in an effort to help minimize problems and thereby reduce inconveniences to all members of this Association. Although owners are ultimately responsible for all compliance violations and their consequences, owners may want to have language in their contracts and/or rental agreements that allows for the owner to pass along the reimbursement of fines and other charges to the actual violator.

IX. The following **appeals hearing agenda** will be followed, unless another pre-determined agenda is identified:

- A. Hearing opened by chairperson
- B. Documentation of those present
- C. Presentation of issue(s) - Association
- D. Documented facts of the case reviewed by the Committee/Board
- E. Owner, or their representative, is given up to 15 minutes to present additional information for consideration by the appeal body and to also clarify why the Association's rules and polices do not apply to their particular situation(s).
- F. Committee/Board may as for clarification and/or request additional information.
- G. The Committee/Board may make a finding regarding the matter or it may adjourn the meeting for up to 45-days to gain additional information.
- H. If the hearing is set over to a future date, the date and time of the hearing continuation will be announced.
- I. Meeting adjourned.

Approved by the Board of Directors June 27, 2006

COMMITTEES, ENTITIES, and BOARDS

Architectural Review Committee (ARC): This committee is responsible for reviewing plans for landscape or structural changes and additions prior to any work being commenced. (See Resolution # 3 for details.) Appeals of this entity's decisions go to the Architectural Review/Compliance Administrator, and ultimately could go to the Board of Directors.

ARC/Compliance Administrator (paid position): This professional coordinates a number of compliance related activities and applies routine Association sanctions that are within the general scope of the Association's policies, rules, regulations, and documents. Appeals would be handled first by the ARC, the ARC/Compliance Administrator, or the Rules Committee, followed by the Advisory Board/Transitional Committee, and lastly by the Board of Directors.

Advisory Board/Transitional Committee: This entity is appointed by the Board of Directors to administer some of the business affairs of the Association. It has broad authority but also reports to the Board of Directors, which has the authority to support or overturn decisions made by the Advisory Board/Transitional Committee. This body is dissolved when control of the Association is transferred from the Developer to the owners and the owner-controlled Board is elected.

Board of Directors: This entity is the major authority of the Association. It has the ability to empower various committees and individuals to handle the administration and the business affairs of our community. The Board of Directors holds the authority to give final approval to new policies and rules and the authority to uphold or overturn decisions made by any of the other bodies within the Association. This authority is rooted in our community's CC&Rs and the 2001 Oregon Condominium Act.

General Manager: This individual works with the various committees and the ARC/Compliance Administrator to help coordinate activities, develop policies and administer the Association's general business affairs, including compliance related issues. Appeals of the Manager's rulings may take a number of routes through the above committees, boards, and entities, depending on the subject matter. The General Manager works with all committees but reports to the Board of Directors for authority in most matters