

Violation and Fine Policy

1. Establishment of a violation.

Any activity or condition continuing on any lot that is in direct opposition to the plat, declaration, articles of incorporation, bylaws, rules and regulations and/or guidelines (referred to as “association’s governing documents”), which is not expressly authorized by the board, is deemed a “violation” under this enforcement policy for all purposes.

2. Notice of violation.

a. Initial Notice. Upon verification of the existence of a violation by the association, or management company (“management”) as agent of the association, an initial violation letter will be sent to the lot owner a written notice of the discovery of the violation (“initial notice”). The initial notice will inform the recipient as follows:

(i) The nature, description and location of the violation; and (ii) A request to remedy the violation; and (iii) Notice that if the violation has already been corrected or plans and specifications for a subject improvement have been submitted to the architectural review committee to disregard the notice.

b. Second Notice of Violation. If the lot owner fails to remedy the violation or fails to submit plans and specifications for the offending improvement to the architectural review committee or if the architectural review committee has denied approval of the plans and specifications submitted, and the violation is continuing, no earlier than ten (10) days from the initial notice (unless specifically provided for in the association’s governing documents), management shall send to the lot owner a second notice of violation informing the recipient as follows:

(i) The nature, description and location of the violation and the failure of the lot owner to correct the violation, as previously requested; and (ii) Notice that if the violation is corrected or eliminated within ten (10) days from the delivery of the second notice of violation, no further action will be taken; and (iii) If necessary, work on any improvement must cease immediately and may not resume without expressed written approval of the architectural review committee; and (iv) Failure to remedy or cease work on any subject improvement will result in the association electing to pursue any one or more of the remedies available to the association under the declaration or this enforcement policy.

c. Failure to Remedy. Failure to (i) cease all work immediately upon receipt of the second notice of violation, or (ii) remedy the current violation existing upon the lot within ten (10) days of the date of the second notice

of violation (or sooner if specifically provided), shall constitute a continuing violation and result in one or more of the following: (a) a fine being levied by the association against the lot owner, (b) correction of the offending improvement by the association at the expense of the lot owner through a benefitted assessment being levied against the lot owner, which may be recorded as a lien against the lot or (c) any other remedy under law or at equity, the declaration or this enforcement policy, including but not limited to injunctive relief. Management shall send to the lot owner a formal notice of fine informing the recipient of the continuing violation and the remedy chosen as a result thereof. The date of the notice of fine shall be the "notice of fine date."

d. Fine Structure. At the board's discretion, pursuant to the provisions of Paragraph 2, an initial fine may be imposed from \$10 to \$5,000 followed by fines imposed at the rate of \$10 to \$5,000 per occurrence, day, week or month, pursuant to the association's fine schedule.

e. Hearing. Included in the notice of fine will be the opportunity for the lot owner to request and be granted a hearing by the appropriate committee or the board prior to any fine or benefitted assessment being levied upon the lot owner. The notice of fine will allow the lot owner ten (10) days to contact management, in writing, to request a hearing or issue a written dispute of the continuing violation. Should the lot owner fail to contact management within (10) days of the notice of fine date, that party will have waived its opportunity for said dispute to be heard before the board of directors. All cases that are up for fine review will be heard by the board of directors at their regularly scheduled meetings.

3. Corrective action.

Pursuant to allowances granted by the declaration, where a violation is determined to exist and referred to the board of directors of the association, pursuant to any provision of this enforcement policy, management, with the approval of the majority of the board of directors of the association, may undertake to cause the violation to be corrected, removed or otherwise abated by qualified contractors if management, in its reasonable judgment, determines the violation may be readily corrected, removed or abated without undue expense and without breach of peace. Where management decides to initiate any action by qualified contractors, the following will apply:

a. Management must give the lot owner and any third party directly affected by the proposed action prior written notice of undertaking of the action. The foregoing notice may be given at any time. b. Cost incurred in correcting or eliminating the violation will be referred to the association to be recovered from the lot owner as an assessment as set forth in the declaration. c. The association, and its agents and contractors, will not be liable to the lot owner or any third party for any damage or costs alleged to arise by virtue of action taken under this Paragraph 3 where the association and its agents have acted reasonably and in conformity with this enforcement policy.

4. Referral to legal counsel.

Where a violation is determined to exist and is referred to the board of directors of the association pursuant to any of the provisions of this enforcement policy and where management deems it to be in the best interests of the association, the Board may, at any time during the enforcement process, refer the violation to legal counsel for action seeking injunctive relief against the lot owner to correct or otherwise abate the violation, or to pursue any other legal or equitable remedy that may be available to the association.

5. Notices.

a. Any notice required by this enforcement policy to be given, sent, delivered or received in writing will be deemed to have been given, sent, delivered or received, as the case may be, the earlier to occur of the following:

(i) When the notice is hand-delivered or posted at the property. (ii) When the notice is placed into the care and custody of the United States Postal Service, the notice is deemed delivered as of the date the notice is deposited into a receptacle of the United States Postal Service with postage prepaid and addressed to the most recent address of the recipient according to the records of the association.

b. Where the interests of an owner in a lot have been handled by a representative or agent of such owner or where owner has otherwise acted so as to put the association on notice that its interests in a lot has been and is being handled by a representative or agent, any notice or communication from the association or management pursuant to this enforcement policy will be deemed full and effective for all purposes if given to such representative or agent.

6. Cure of violation during enforcement.

A lot owner may correct or eliminate a violation at any time during the pendency of any procedure prescribed by this enforcement policy. Upon verification by management that the violation has been corrected or eliminated, the violation will be deemed no longer to exist and the notice of violation voided. The lot owner will remain liable for all costs, fines and attorney fees and costs under this enforcement policy, which said amounts, if not paid upon demand thereof by management, will be referred to the association for collection as an assessment pursuant to the Declaration. If a violation should reoccur during a six (6) month period, the violation shall continue on the violation process where the last notice was given.

Fine Policy When an owner (including any family member, resident, occupant, visitor, guest, agent, licensee or tenant of the owner) violates the provisions set forth in the association's governing documents (i.e., plat map, CC&Rs, articles of incorporation, bylaws and/or rules and regulations), there shall be grounds for assessment of a monetary penalty/fines and the violating owner shall be deemed responsible for such violation(s) and the fine assessed.

If the violation continues past default, a fine or penalty may be assessed against the owner and will be made due and payable if the violation continues to exist. The penalty shall be considered a personal liability of the owner. The following schedule is the time frame an owner has to cure his/her/their/its violation before the association may reassess the status of the violation: a. Scheduled Time for Correction

VIOLATION

TIME TO CURE BEFORE VIOLATION IS REASSESSED FINE AMOUNT

Initial notice of violation Ten (10) days* Courtesy – No fine*

Second notice of violation Ten (10) days* \$25.00*

The fine will be assessed without further notice until the violation is cured

* association, through its board of directors, reserves its right to alter time line and fine amount under circumstances that it determines are just in the board's sole discretion. * The association reserves its right to refer any violation to its legal counsel at any time.

Collection: Fines and penalties that are levied as stated above may be assessed against an owner and may become due and payable within 30 days after the fine is assessed after providing the owner with notice and an opportunity to be heard. Failure to pay the fines and penalties may result in the following collection procedure:

1. Interest accruing on the total balance owed at the rate of ten (10%) percent per annum;
2. After the initial 30 days, a demand letter sent to the owner via U.S. Mail or personally delivery to the owner. The owner will be provided 10 days in which to respond. The owner will be charged for the cost of this letter. If the owner fails to bring his balance current within the 10 days prescribed in the demand letter, the association may place the owner in collections and the association may proceed with the legal remedies available to it. The owner will lose all voting rights until the balance is paid in full. Any and all costs associated with the collection of the past due fines and penalties, costs, attorney's fees and other charges will be assessed against the owner's lot. Legal counsel may initiate action seeking injunctive relief against the lot owner to correct or otherwise abate the violation, or to pursue any other legal or equitable remedy that may be available to the association, including, but not limited to the collection of the past due fines assessed and other charges and attorney fees incurred.

Enforcement and Due Process Policy and Procedures

I. Introduction

1. Authority. Chapter 47F of the North Carolina Planned Community Act (the “act”) provides that the board of directors of the association shall have the power to establish, adopt, and enforce rules and regulations with respect to the common areas and other areas of responsibility by the declaration [insert appropriate language from state statute]. The declaration of the association sets forth certain covenants. The authority to enact the enforcement and due process policy and procedures is derived from the above-referenced documents and statute.

2. Governing documents. The enforcement and due process policy and procedures shall be considered with the enforcement provisions of the declaration, the articles of incorporation of the Fern Valley Home Owners Association, the bylaws of the Fern Valley Home Owners Association, and the guidelines, resolutions, rules, regulations or policies of the Fern Valley Home Owners Association (the foregoing documents are herein collectively the “governing documents”).

3. Definitions. Unless otherwise indicated, defined terms used herein shall have the meaning set forth in the governing documents.

II. Enforcement and due process procedures

1. Procedures for violations of the governing documents.

a. Noncompliance with the governing documents may be noted by any resident or property owner of the Fern Valley Home Owners Association, member of the Fuquay Varina police department, or by a city/county employee acting in an official capacity by initially submitting a written notice to the Fern Valley HOA Board. The notice shall specify the time, date, place, and nature of the violation. b. Upon receipt of such a notice, a Fern Valley HOA Board member shall investigate the alleged violation. If a violation is substantiated, the staff member shall attempt to secure compliance by sending a written first notice to the owner stating the time, date, place, and nature of the violation. The notice will provide a time period for compliance, will enclose a copy of this policy, and will enclose copies of applicable section(s) of the governing documents that govern such violation.

If the violation is not corrected within the time period given, the Fern Valley Home Owners Association will send a written second notice of violation again stating the date and place the violation was noted

and that such violation may result in imposition of sanctions, charges, and/or legal action after notice and hearing by the board if the violation is not rectified within the second stated time period.

A record of this action and a copy of all notices sent by the board of Fern Valley Home Owners Association and any correspondence relating thereto shall be kept in the association files and may be sent to the association's legal counsel.

c. If an owner fails to comply with the first and second notice, the staff member shall send to the owner by registered mail a notice of hearing before the board of directors. Before any disciplinary action is taken against any such resident or owner, the resident or owner shall have the opportunity to be heard and represented by counsel before the board.

Notice of hearing shall be hand-delivered or mailed by certified mail, return receipt requested to the owner and, if applicable, to the resident at the address(es) of record with Fern Valley Home Owners Association at least fourteen (14) days prior to the hearing. The notice shall specify the date, time, and location of the hearing.

The notice shall additionally identify the specific provisions of the governing documents the owner or resident is alleged to have violated or to be in violation of, shall contain allegations of fact sufficient to support a finding of such violations, and shall, to the extent possible, specify the times, dates, places, and persons involved and shall submit in writing the information listed above along with a description of the attempts already used to resolve the violation.

d. If, after the hearing, the board determines that a violation of the governing documents has occurred, the board shall have the power to assess charges against any owner for any violation for which the owner or the owner's family members, tenants, guests, or other invitees are responsible.

2. Violation charges.

a. The amount of any charges assessed by the board shall be up to fifty dollars (\$50.00) for a single offense or twenty five dollars (\$25) per day for any offense of a continuing nature.

b. If the board finds that the same violation is recurring within a six (6) month time period but is not present on a daily basis, the violation(s) will be deemed to be an offense of a continuing nature and will accrue charges of twenty five dollars (\$25.00) per day for each day the violation is noted on the property during a specific period of time (e.g., six months).

c. The amount of any charges so assessed shall not be limited to the expense or damage to the Fern Valley Home Owners Association caused by the violation, nor shall the amount of such charges be deemed to reimburse the Fern Valley Home Owners Association either in whole or part for any damages or costs incurred by the Fern Valley Home Owners Association as a result of such violation or any enforcement action taken by or on behalf of the Fern Valley Home Owners Association.

d. Any charges so assessed shall be treated as a special assessment against the owner's lot and, as such, shall entitle the Fern Valley Home Owners Association to file a memorandum of lien against the title to the owner's lot. Once recorded in the clerk's office of the circuit court for Wake County, the lien shall be perfected and shall have the priority specified in Section 47F-3-116 of the North Carolina Planned Community Act. In connection with the filing of the memorandum of lien, the Fern Valley Home Owners Association may notify any mortgage company or lender who holds a mortgage or deed of trust secured by the owner's lot of the filing of such lien. Owners are cautioned that the filing of such lien may trigger a default under any mortgage or deed of trust secured by the lot.

3. No election of remedies. The assessment of charges and/or the filing of a memorandum of lien shall not constitute an election of remedies by the Fern Valley Home Owners Association. Such charges and lien shall be in addition to any other remedy available to the Fern Valley Home Owners Association in law or in equity or contractually pursuant to the governing