

# *Valley @ Erindale Covenant Enforcement and Fines Policy*

## **1) Enforcement**

The policy defines the methodology and processes used by the Valley at Erindale (V@E) Board to enforce the Covenants, By-Laws, Rules, and Policies of the Association.

NOTE: It must be understood that policing the V@E properties for violations is not required of the V@E Board. However, the Board is responsible for investigating written complaints of violations by members of the homeowners association (HOA). Should a violation be confirmed, this policy describes the sequence of actions to be taken.

Reporting Violations Complaints regarding alleged violations of Covenants, By-Laws, V@E policy, or Architectural Control guidelines (ARC Policy) must be reported by a V@E property owner or resident on the complaint form to any Board of Directors (BOD) member.

The complaint form can be found on the V@E web site and must be used to file a complaint. The complaint must clearly describe the alleged violation, the street address, and name of the alleged violator, if known, and must include the name, street address and/or lot number of the complainant. The complainant should also include a phone number or e-mail address, in case the Board needs to contact them. The information about the complainant will not be divulged to the alleged violator unless the violation is contested. The complainant information will be kept on file should further information or follow-up be required.

## **2) Investigating Complaints and Warnings/Citations**

Upon receipt of a complaint, the Board is required to investigate said complaint. If additional information is required, the complainant may be contacted verbally or in writing.

As stated in the V@E Covenants, V@E members hereby grant to the Association an express easement for the purpose of going onto the lots of owners to investigate a reported violation of the Valley at Erindale HOA policies. Reasonable attempts will be made to contact the property owner prior to exercise of this provision.

Investigation of complaints shall be completed by two board members, or a board member and an Architectural Review Committee member, if appropriate, at the discretion of the Board. Prior to beginning the investigation of an alleged violation, it must be determined that a violation of a V@E Policy, Covenant, or By-Law exists. The complainant may be contacted to obtain more information or to clarify what has been provided, if necessary to make the initial assessment. If the allegations in the complaint would not constitute a violation of policy, the complainant will be notified that no further action may be taken. Specific details of any investigation will not be revealed to the complainant.

If a violation is found to exist, the Owner will be informed of the specific violation(s), the specific action(s) needed to cure the violation, and an explanation of the escalation fines process listed in the Fines Procedure listed below.

It is the responsibility of the owner to notify the Association that the violation has been cured and, if possible, send visual proof. When the violation is cured, a letter will be sent via regular mail, verifying that they are no longer in violation and will not be fined any further for this specific violation/complaint.

### **3) Hearings before the V@E Board**

There should be a minimum of three board members present at the hearing. Depending on the nature of the alleged violation, one or more members of the Architectural Review Committee (ARC) may also be requested to attend. The Owner may have witnesses present to observe the proceedings. Colorado statutes mandate that covenant violation hearings must be adjudicated by "an impartial decision maker". This does not disqualify existing Board members from being impartial decision makers so long as they do not have any direct personal or financial interest in the outcome of the hearing (i.e., they do not receive any greater benefit or detriment than will the general membership as a result of the outcome). Disqualifying situations may include situations in which the Board member is a neighbor or has a personal history with the person who is subject to the enforcement. Both a positive and a negative history would disqualify the Board member. Board members having the above conflicts should abstain from the proceedings.

At the beginning of each hearing, the presiding officer may introduce the case by describing the alleged violation and the actions taken up to the time of the hearing. It is recommended that procedures to be followed and any rules of conduct to be followed during the hearing be described at this time. It should be made clear that the purpose of the hearing is to allow the alleged violator the opportunity to address the merits of the violation and why a fine or other penalty should not be levied, as well as to attempt to obtain a reasonable resolution of the matter. The owner should be reminded that the Board is simply fulfilling their responsibilities to enforce the Covenants, By-Laws, and Policies of the V@E.

Each party (complainant, alleged violator, or investigating representative) may, but is not required to, make an opening statement, present evidence or testimony, present witnesses if applicable, and make a closing statement. Neither the complainant nor the alleged violator can be required to attend the meeting, although it is in their best interest to do so. The Board is to base its decision solely on the matters set forth in the original complaint, the results of the investigation, and such other credible evidence as may be presented at the hearing. After all testimony and evidence has been presented at a hearing, the Board shall, within 15 days, render its written findings and decision. A decision, either finding for or against the member, made by a majority of the Board (with input from ARC members if necessary) present at the hearing. Within 10 days of the presentation of the written decision, the alleged violator and the complainant will be notified of the decision.

### **4) Enforcement Means**

The enforcement policy and process is adopted in addition to all other enforcement means and remedies that are available to the Association through its Declarations, By-Laws, Articles of

Incorporation, Policies, and Colorado Law. If the violation is also found to be a violation of Colorado Springs/El Paso County laws or codes, the issue will be turned over to the appropriate Colorado Springs/El Paso County agency for action. By Colorado statute, the Association may levy fines against an Owner for violating the Association governing documents. The above procedures do not preclude other forms of enforcement means including:

**a. Fines** The HOA may levy fines for violations as outlined in the Fines Procedure policy.

**b. Legal Action** The HOA may pursue legal action against an Owner to enforce the provisions of the Declarations, By-Laws, Covenants, or Policies. The legal actions may be initiated following the Board's determination that it is in the best interest of the HOA to take these actions.

**c. Other Disputes, excluding covenant violations between Property Owners and the Association:**

Other issues, excluding covenant violations, may arise where an Owner disagrees with an action or decision of the Board. The Owner(s) may request to be placed on the agenda of the next Board meeting to discuss the action or decision. Any such request shall be in writing and shall be personally delivered to a member of the Board of Directors. The Owner(s), in their written request to be placed on the agenda, shall make a good faith effort to explain the grievance to the Board. The Owner is encouraged to allow the Board of Directors the opportunity to resolve the dispute in an amicable fashion and schedule the meeting within 60 days of request receipt. The Board of Directors is to make every reasonable effort to schedule and coordinate the meeting within 60 days of the request. The purpose of the meeting is to allow both sides to present their issues in an environment in which all parties are comfortable. A good faith effort will be made to negotiate a resolution agreeable to both parties. Through negotiation, the parties will communicate directly with each other in an effort to reach an agreement that serves the interests of all parties involved. Should the Owner disagree with the findings of the Board, it is within the rights of the Owner to seek legal recourse.

**5) Alternative Dispute Resolution Policy**

Alternative Dispute Resolution means alternative methods of dispute resolution to avoid litigation, including negotiation and mediation. The Association encourages owners and/or residents with disputes to resolve such disputes without court proceedings. At its discretion, the Board of Directors will take reasonable steps to facilitate negotiation or mediation if this method of resolution avoids legal actions.

The Colorado General Assembly has found and declared that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disputes. Therefore, common interest communities are encouraged to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health, or safety of the community.

In the event of any dispute involving the Association and an Owner, the Owner is invited and encouraged to meet with the Board of Directors to resolve the dispute informally and without the need for litigation. If the Owner requests to meet with the Board, the Board shall make a reasonable effort to comply with the Owner's request.

If the dispute cannot be resolved at the Board meeting or, if applicable, hearing, the parties may choose to use mediation. Any of the involved parties may request in writing that the issue be subjected to mediation. If all parties agree to this method, they shall participate in good faith in the mediation. The role of the mediator is to facilitate further negotiation between the parties. The mediator will not have the power to decide how to resolve the dispute but will use recognized, accepted mediation techniques to assist the parties in making a decision. The mediator shall be selected by consensus of the parties involved within 30 days of receipt of the request. Any cost of the mediation will be shared equally among the parties unless they and the mediator agree otherwise. If either party subsequently violates the stipulation of the mediation, the other party may apply to the court for relief.

It should also be noted that another level of dispute resolution, known as arbitration, is possible. The use of arbitration must be agreed upon by all parties, which must be conducted in compliance with the Uniform Arbitration Act.

Nothing in this policy shall be construed to require any specific form of alternative dispute resolution, such as mediation or arbitration, or require the parties to meet. Neither the Association nor the Owner waives any right to pursue whatever legal or other remedial actions are available to either party.

## **6) Fines Procedure**

V@E has policies that every member is expected to know about and to comply with.

If a violation is found to exist, a warning or citation letter will be sent via certified mail /return receipt requested to the Lot Owner and a copy filed in the Owner's file. The letter will explain the following:

- **The nature of the violation**
  - **The remedy to the violation**
  - **The violation must be cured within 30 days of the date on the notification letter**
  - **The potential fines should the Owner fail to cure the violation by the compliance date**
  - **The escalating fines chart and process in the Fines Procedures policy**
  - **The Owner's right to a hearing with the Board**
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- The member will receive a written warning for the first violation; however, they must still cure the violation within 30 days of the date on the notification letter which will be sent via certified mail/return receipt requested.
  - If the violation is not cured within 30 days of the date on the first notification letter, they will receive a second notification letter advising they are being fined. This letter will be sent via certified mail /return receipt requested.
  - If the violation is not cured within 30 days from the date on the second notification letter, they will receive a third letter advising of a second fine. This will be sent via certified mail /return receipt requested.
  - If the violation is not cured within 30 days from the date on the third notification letter, they will receive a fourth notification letter that will be sent via certified mail /return receipt requested advising that they will have a lien placed on their property in 45 days from the date of the letter if the fines have not been paid. If the violation has not been cured, but the fines have been paid, it will be referred to the attorney within 45 days of the date on the letter.

It is the expectation that a member will cure the violation once the member is given a written warning of a policy violation. The ultimate goal of this escalating fine process is to gain voluntary compliance to V@E policies at the lowest effective violation level.

***Fine Schedule*** *The following fine schedule has been adopted for V@E policy violations:*

First violation notice sent via certified mail/return receipt requested; Warning to cure the violation

Second violation notice for same policy violation sent via certified mail/return receipt requested; Fine \$200.00

Third violation notice for same policy violation sent via certified mail/return receipt requested; Fine \$300.00

The V@E Board of Directors shall consider the Alternative Dispute Resolution Policy at any time during the policy enforcement process. However, the Board has the discretion to disregard that policy if, in its sole discretion, the actions described in the Alternative Dispute Resolution Policy would not be effective or are otherwise unwarranted. If the Board chooses not to use the Alternative Dispute Resolution Policy to resolve a violation, the escalating fines schedule shown above should be followed.

Levying of fines will not continue after the third letter. However, 8% annual interest may be added to the fines and/or a lien may be placed on the property for unpaid fines. If the violation is not cured it may be referred to the attorney.

Unless the Alternative Dispute Resolution Policy is utilized or there are extenuating circumstances that would lead the Board to believe there is no reasonable expectation of collecting a levied fine or curing a violation such as the member cannot be located, the El Paso County Assessor has no current address or contact information on file for the member, mail has been returned, or there is no physical address for the member, the documentation describing the policy violation and the attempts by the Board to enforce V@E policy will be turned over to the Association's attorney to take appropriate legal action.

Members shall be responsible to pay the cost for processing these actions, the accumulated fines, any applicable Attorney's fees, and lien filing and release fees.