

**RESOLUTION OF THE BOARD OF DIRECTORS  
THE VISTOSO POINTE HOMEOWNERS ASSOCIATION  
ADOPTED JANUARY 16, 2017**

This resolution is adopted by the Board of Directors of THE VISTOSO POINTE HOMEOWNERS ASSOCIATION pursuant to Arizona Revised Statutes §33-1803, which provides that the Association's Board of Directors is entitled to impose fines for violation(s) of the Declaration of Covenants, Conditions and Restrictions (CC&Rs) and any rules adopted by the Board of Directors. The procedure for imposing fines for such violation(s) is set forth below and supersedes any other such procedure previously adopted by the Board. This policy is presumptive for all violations. In its discretion, the Board may deviate from the policy depending on the facts and circumstances of an individual violation.

**I. "Friendly Reminder"** In most cases, and when appropriate as determined by the Association Manager or the Board, the first notification to an Owner of their violation of the CC&Rs or a rule will be by means of a "friendly reminder" letter. The Association Manager will issue the letter.

**II. "Notice of Violation"** - A written "**Notice of Violation(s)**" together with a request to cease and desist from an alleged violation(s) may be sent to the Owner of the Lot via regular mail and shall specify the relevant facts relating to the violation.

If the Owner is leasing his/her home, the Association may provide a copy of the Notice of Violation(s) to the Owner's tenant. In the Board's discretion and based on the facts, the Board may begin the process with the Notice of Violation or Notice of Hearing. The Board may deviate from any guidelines herein based on the application of the factors contained in paragraph VI below.

Whether the Association begins the process with a Friendly Reminder, Notice of Violation or Notice of Hearing, the initial communication should contain:

- (A) The Name of the complaining Member or Property Manager;
- (B) The provision or provisions in the Declaration or Rules that has allegedly been violated; and
- (C) The date or dates of the alleged violations;
- (D) How to appeal the violation; and
- (E) Notice of the member's option to petition for an administrative hearing on the matter in the department of fire, building and life safety pursuant to section 41-2198.01.

**III. Definition - Continuing Violation(s)**. Each day a violation(s) continues after notice to cease has been given by the Board to the Owner constitutes a separate violation(s) and can be subject to a fine.

**IV. "Notice of Hearing"** - In its discretion, the Board may decide to send the Owner a written "**Notice of Hearing**" at any step in the process. The notice should contain:

- (a) The nature of the alleged violation(s);
- (b) The time and place of the hearing, which shall be not less than seven (7) days from the date of the notice;
- (c) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his or her behalf; and

(d) The proposed sanction to be imposed, which includes the imposition of a fine and the payment of any attorney fees incurred by the Association.

*In the alternative, the Board may put the burden on the Owner to request a hearing within a defined deadline. The Board may impose a fine without a hearing in the event the Owner does not timely request a hearing.*

#### **V. Hearing.**

(a) The hearing shall be held pursuant to the Notice of Hearing. The complaining Member and the Owner shall be afforded a reasonable opportunity to be heard. In cases in which a complaining homeowner initiated the process, the Board shall evaluate the proof according to protocol adopted by the Board.

(b) Before any sanction becomes effective, the Association shall submit proof of the notice and the invitation to be heard.

(c) Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered into the Owner's lot file.

(d) The notice requirement is satisfied if the Owner appears at the meeting.

(e) The minutes of the meeting shall contain a written statement of the results of the hearing and the sanctions, if any, to be recommended to the Board.

#### **VI. Imposition of Fine and any other Sanctions.**

(a) Fines. At the conclusion of the hearing, the Owner may be excused from the hearing and the Board of Directors shall deliberate on the amount of the fine to be imposed, if any, based on:

- The seriousness of the violation(s),
- Whether this is a first violation or a continuing violation(s)
- Whether the type of offense poses a danger to property or any person
- Any other extenuating circumstances and whether the Owner agrees in good faith to correct the violation(s) within the time specified by the Board of Directors.
- Whether the amount is sufficient to obtain compliance, based on the facts
- Impact on property values
- After the Board of Directors determines the amount of the fine, the Board of Directors shall send notice to the Owner of the amount of the fine and its due date.
- The Board of Directors is empowered to impose a fine for each day that the violation(s) continues. **SEE ATTACHMENT A – FINES GUIDELINES.**
- **The attached Fines Guidelines are not binding. The Board of Directors may impose a fine in any reasonable amount, based on the application of the factors above**

(b) **Costs.** Owners to whom certified mail notices are sent shall be assessed the management company's charge to the Association for the mailings. Owners may also be assessed an administrative processing charge in an amount established by the Board.

#### **VII. Request for Reconsideration to the Board of Directors.**

(a) The Owner may request reconsideration by the Board of Directors.

(b) In order to schedule an appearance before the Board, the Owner must submit a written request to the Association Manager within seven (7) days of receipt of notice of the sanctions.

(c) The meeting shall be scheduled and the Owner notified of the date, time and location via certified and regular mail.

(d) The meeting will be held in executive session pursuant to the Notice of Hearing and the Owner shall be afforded a reasonable opportunity to be heard.

(e) At the conclusion of the meeting, the Owner may be excused from the meeting and the Board shall issue a ruling on whether the sanction stands, is modified or is rescinded.

(f) The Board shall send a written notice to the Owner of its ruling.

(g) The ruling of the Board will be final.

**VIII. Payment of the Fine and/or Penalties.** The Board shall advise the Owner that any fine, which is not paid within fifteen (15) days of its due date, is delinquent and subject to late fees and interest the same as any other assessment, subject to applicable Arizona law.

**IX. Collection.** Fines and penalties will be collected from the Owners.

**X. Effective Date.** The effective date of this resolution is January 16, 2017.

DATED this 16th day of January 2017.

THE VISTOSO POINTE ASSOCIATION

By: William D. Daniels, President

Attest: Eddie Boy, Secretary

## ATTACHMENT A - FINES GUIDELINES

1. No fine shall be assessed until the Member who has committed a violation has been given due written notice and an opportunity for a hearing.
2. Presumptive fines are as follows:
  - Parking: \$25.00
  - Weeds/landscape: \$10.00
  - Trashcans: \$10.00 per day
  - Failure to submit for approval or to comply with ARC request for corrective action: \$100.00
  - External Lighting Violation: \$100.00
  - Rental Violations: \$250.00
3. The Board shall also have the authority to increase the presumptive fines above for additional violations of the same nature.
4. Monetary fines for other violation(s) of the governing documents and/or rules and regulations of the Association may be as follows:
  - First violation \$25
  - Second violation (of the same nature) \$50
  - Third violation (of the same nature) \$100
  - Each violation after the third (of the same nature) \$250
5. An additional fine that accrues each day may be assessed after the aforementioned fines have been assessed if the violation is a continuing one. (**Example:** A Homeowner installs an improvement without ARC approval. A first violation fine of \$100 assessed. If the violation continues uncorrected, an additional fine in a reasonable amount would be assessed for each day until the violation ceases. The Member ultimately corrects the violation. The Member installs another improvement without ARC approval. A second violation fine of \$100 is assessed. If the violation continues uncorrected, an additional daily fine would be imposed until the violation ceases).

6. The amounts of the: 1) presumptive fines above, 2) other fines, 3) daily fines, and 4) increasing fines of similar violations are mere guidelines. The Board shall have the specific authority to deviate from these guidelines by applying the factors below:
  - The seriousness of the violation(s).
  - Whether this is a first violation or a continuing violation(s).
  - Whether the type of offense poses a danger to property or any person.
  - Whether the Owner agrees in good faith to correct the violation(s) within the time specified by the Board of Directors.
  - Whether the amount is sufficient to obtain compliance, based on the facts
  - Impact on property values.
  - Any extenuating circumstances
7. The Board may impose non-monetary penalties in lieu of or in addition to the fines above including, but not limited to, the suspension of Member voting rights; the suspension of the use of amenities; or placing violation stickers on wrongfully parked vehicles.
8. It is the obligation of the Member to advise the Association in writing that the violation has ceased.