



This Policy shall apply to any alleged Violation of the Covenants, By-laws, Articles of Incorporation, Inc. and the Policies and Procedures of Pine Cone Acres Homeowners Association, Inc. (the “Association”), except and excluding non-payment of assessments or other sums, which is governed by the Assessment Collection Policy of the Association. All alleged Violation/Violation Notifications will be sent to Owners by USPS Return Receipt Requested. All complaints of Violations shall be considered alleged Violations until the Board has had an opportunity to review, deliberate, and decide the complaint is a valid Violation.

1. Complaints

- (a) Initial complaints of any alleged Violation shall be presented to the Board of Directors (“the Board”) in writing or orally by any person before or at any meeting.
- (b) It is recommended that anyone observing an alleged Violation of the Covenants, By-laws, Articles of Incorporation, Inc. and/or the Policies should notify the Association in writing or email, and include the name and address (if known) of the person(s) in alleged Violation (the “alleged Policy Violator”), and the date, time, and location of the alleged Violation. The complaint should include name, address and phone number of the reporting party. Reports will be handled confidentially (within reason or unless disclosure is legally required), but the Board may require such information in order to validate any necessary legal actions and the person(s) making the report may need to be a witness at a hearing on the matter before the Board.
- (c) The Board shall, in its discretion, determine whether or not the complaint shows cause for further proceedings and is empowered to send courtesy letters concerning reported alleged Violations and/or warnings of possible sanctions, fines and/or suspension of privileges, and/or issue a ‘cease and desist’ order, to the alleged Violator. If the Board is unable to convince the alleged Violator that the offending practice should be ceased, then the Board shall make a formal report and discuss at a later hearing. The Board shall not decide the validity of the complaint at such meeting, but rather shall notify the Owner (the “Notice”) and shall set the matter for hearing at a later date.
- (d) Owners shall be jointly and severally liable for alleged Violations committed by their contractors, guests, or tenants. The Board may proceed against the Owner and the contractor, guest, or tenant, simultaneously or separately, and actions against one shall not bar action against the others. The Board may contact law enforcement authorities, any regulatory or licensing authorities or other third parties regarding the alleged Violation, but any action or decision by those parties shall not bar the Board from proceeding with Covenant, By-laws, Articles of Incorporation, Inc. and Policies enforcement action.

2. Notice and Scheduling Hearings

- (a) The Board, or its officers or agents, shall serve the Notice to the Owner, and a copy may be sent to the alleged Violator (if the name has been furnished to the Association), such as a tenant, contractor, guest or family member of the Owner (the Owner of the property). The Notice shall be deemed received by the Owner when proof of receipt is received by the Board. The Notice may be sent to the address of record (the address shown on the Deed) if the Owner has failed to register a current mailing address with the Association. The Notice will also be sent to the complaining party.
- (b) The Notice will advise the Owner that if the Owner desires a hearing to challenge or contest any alleged Violations and/or the resulting sanctions, fines and/or suspension of privileges, and/or to discuss any mitigating circumstances, the Owner must request such hearing, in writing, to the Board, within 10 days of receipt of the Notice and the Board will acknowledge the receipt of the request. If a request for a hearing is made by the Owner, the hearing shall take place at a meeting of the Board, which is posted in the Agenda and/or on the website. The request for hearing or other written response from the Owner must describe the basis for challenging the alleged Violation and/or the mitigating circumstances.
- (c) Any written statement from the Owner must be received by the Board at least 45 days before the hearing, and must be served by certified USPS return receipt requested, addressed to the Association in care of its registered agent, as maintained with the Colorado Secretary of State, or such other address as the parties may be advised of in writing. If the time requirements set forth above conflict, or the Board deems appropriate in its discretion, the hearing may be re-scheduled to the next regularly scheduled meeting of the Board. Any hearing or request for hearing shall not stay the other enforcement procedures described below (3. Hearing), unless otherwise directed by the Board.

3. Hearing

- (a) The primary purpose of hearings before the Board is to resolve Covenant, By-laws, Articles of Incorporation, Inc. and Policies enforcement matters as early as possible, without the expense of litigation. As a result, any Owner and/or alleged Violator who appears at a hearing is encouraged to discuss resolution in lieu of or in addition to the hearing. If the Board believes that the Owner/alleged Violator is acting in good faith and that there is a realistic chance of resolution, the Board may reschedule the hearing and attempt to use the remainder of the time that was originally scheduled for a hearing for the alternative dispute resolution (“Mediation”) as described in the Procedure for Addressing Disputes Policy, (2) and (3). However, if at any time the Board, in its sole judgment, believes that a delay will harm the interests of the Association, it may proceed with the hearing.
- (b) Hearings shall be conducted by the Board. In the event any Director who would receive a greater benefit or detriment from the outcome of a hearing than the general Membership of the Association shall recuse themselves from acting as decision makers during any hearing. The Owner must furnish a written statement describing the basis for asserting that any Directors should be recused, to the Board, prior to the hearing and has the right

to have the matter heard by an ¹ impartial decision maker. If disqualification of any Director results in an even number of remaining Directors eligible to hear a case, the Presiding Officer may appoint an impartial Member in Good Standing to serve as a voting Director for that hearing who would not receive a greater benefit or detriment from the outcome of a hearing as agreed by the alleged Violator.

- (c) Unless otherwise determined by the Board, all hearings shall be open to attendance by all Owners in the Association.
- (d) At the hearing, the Board may consider any written or oral information produced by the Owner, the alleged Violator or other interested party(ies). Any participant may question any witnesses and examine any documents presented at the hearing. The Board shall tape record or otherwise transcribe the hearing. The Board may proceed with the hearing even if the Owner fails to appear or refuses to participate or to submit information.

4. Extent of Violations

- (a) Each incident of each day of a continuing Violation may be considered a separate Violation for which any maximum fines may be imposed. For example, each day during which a pet or a sign is permitted to remain is a separate Violation. The Board may in its discretion impose increased fines for repeated or intentional Violations.

5. Parties to Alleged Violations

- (a) Owners of property located within the Association shall be responsible for alleged Violations committed by their contractors, guests, family members, and/or tenants. The Board may proceed against the Owner and/the alleged Violator. The Board may contact the police, any regulatory or licensing authorities or other third parties regarding the alleged Violation, but any action or decision by those parties shall not bar the Board from proceeding against the Owner.

6. Enforcement

- (a) The Board will make a determination after an initial complaint is received and investigated, and the Board will notify the Owner who is the subject of the complaint of their determination at the next Board Meeting, a separate hearing, or by USPS return receipt requested. Enforcement procedures vary according to the specifics of the alleged Violation, subject to the following guidelines:
 - (i) Serious/Immediate Risk Violations: When a Violation concerns a serious immediate situation for person or property, the Board will seek prompt action by the Violator to correct and avoid any recurrence. The Board will contact the Owner and/or Violator, and a hearing will be scheduled as soon as possible. Law

¹ impartial decision maker: means a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association {C.R.S. §38-33.3-209.5, (2) (b) (II)}

enforcement officials will be immediately notified involving: fireworks, open fires, hunting of any kind or the sustained or excessive discharge of firearms which becomes an annoyance, nuisance or is a danger to Homeowners, which shall not be permitted in Pine Cone Acres, et cetera. Please refer to Pine Cone Acres Covenants, 11. Nuisances and Vegetation Management Burning Information at www.bffire.org and Ordinance No. 15-001, El Paso County Commissioners, Section 13. Vegetation Management Burning Requirements at: <http://car.elpasoco.com/clerktotheboard/Documents/15-001%20Open%20Burning.pdf> for additional information.

- (ii) Easily Remedied Violations: When a Violation can be remedied by quick action, the Board may contact the Owner and warn of a short term notice period, usually twenty-four (24) hours to seven (7) days, during which the Violation must be cured. Examples include vehicle and sign Violations or refuse and rubbish, et cetera. Owners may receive a warning by mail, phone, e-mail, or in person, advising of the Violation, the time to correct, and further action should they fail to act. Violations that remain uncorrected after the notice period or those Violations that are corrected but then subsequently recur may trigger a notice of hearing before the Board. Such hearings may be scheduled as soon as possible.
- (iii) Other Violations: When a Violation may reasonably require thirty (30) days or longer to remedy, the Board may warn the Owner of the Violation and establish a notice period during which the Violation must be cured. Violations that remain uncorrected after the notice period or those Violations that are corrected but then subsequently recur may trigger a notice of hearing before the Board. Such hearings may be scheduled as soon as possible.
- (iv) Repeat Violations: If a Violation recurs after a fine or other action has been imposed, no warning notice will be made and such Violation may trigger a notice of hearing before the Board. Such hearings may be scheduled as soon as possible. At such hearing, an escalating fine schedule or other action may be imposed, the general guideline to be at least a doubling of the prior penalty.
- (v) Noisy and/or Loose Animal(s) Violations: Complaints will be addressed using the Covenant document section 11. Nuisances, and if necessary, enforced:
 - A first complaint will be issued a courtesy Notice with resolution expected within 10 days;
 - A second complaint will be issued a second Notice with resolution expected within 10 days;
 - A third complaint will be issued a hearing Notice for the next monthly Board Meeting;

If warranted, also contact 911 or the El Paso County Sheriff's Department 719-390-5555. Please visit [Resolution No. 12-384, Board of County Commissioners](#), 8. Control and 9. Dangerous Dogs Prohibited and also Pine Cone Acres Covenants, 11. Nuisances.

7. Fines and Sanctions

- (a) After the hearing, any Violation of the Governing Documents may subject the Owner to a reasonable fine assessment imposed by the Association. Fines for certain specific Violations are set forth in this Policy. In cases where no specific fine is listed, the fines will generally be as follows:

First time or minor Violation – Written Warning
Repeated minor Violations – \$50.00 Fine
Serious Violations – Up to a \$100.00 Fine

Fines may not exceed \$1,000 for any finding of a Violation.

- (b) Any determined Violation shall entitle the Board to seek recovery from the Owner, its reasonable attorney's fees, court costs, interest, and any other collection expenses, regardless of whether litigation is instituted or is successfully concluded. The Board may seek to recover such fees and costs by all legal remedies.
- (c) The Board, in its discretion, may waive fines, attorney fees, court costs, interest and other collection expenses, if, in its reasonable discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of any portion thereof, upon the Violator coming into compliance with the Covenants, By-laws, Articles of Incorporation and Policies.
- (d) Repeat offenses and/or repeat offenders will justify higher fines.
- (e) Fines will be due and payable within (30) days of the date of the imposed fine, and shall be considered delinquent after the due date. The Owner shall be notified by certified USPS return receipt requested. Accumulation of fines may result in a lien being filed against the Owner and may be foreclosed. The Board may notify any lender and credit agency of such obligation and lien. Additionally, the Board may bring legal action to recover the fine(s).
- (f) Payment of an assessed fine does not relieve the Violator from the responsibility of correcting the Violation.
- (g) The board shall review and make a determination if a Member also has delinquent Assessments and may impose them along with other fines.

8. Substantial Compliance

- (a) Technical irregularities or defects in the complaint, Notice or other compliance with this Policy shall not invalidate the proceedings or any fine or sanction imposed. This Policy shall be liberally construed to accomplish prompt, effective enforcement of the Association's Covenants, By-laws, Articles of Incorporation and Policies.

9. Board Resolves Questions of Construction

- (a) If any doubt or questions shall arise concerning the true intent or meaning of any of the Covenants, By-laws, Articles of Incorporation or these Policies, the Board shall determine the proper construction of the provision in question, and shall set forth in a written statement the meaning, effect and application of the provision. These determinations will thereafter be binding on all parties so long as it is not arbitrary or capricious, and they may be filed for record with the Clerk and Recorder of El Paso County.

The Board may review this Covenant Enforcement Policy and update as needed.

PINE CONE ACRES HOMEOWNERS ASSOCIATION, INC.

Revised and Approved this 13th day of April 2016