

Blumenau Homeowner's Association

Governing Documents Enforcement and Fine Schedule Policy and Procedure

Although Blumenau HOA pre-dates the required participation of the Colorado Common Interest Ownership Act (required for all HOAs formed *after* 1992 – Blumenau HOA was formed in the 1970s), the Board of Directors has sought to adopt many recommended uniform and systematic policies and procedures as prescribed in the Act.

The Association hereby adopts the following policy and procedure for Covenant and Rule Enforcement and Fines, effective June 28, 2018:

1. Enforcement Procedure. Policing for violations is not required of the BHA Board.

The Board shall not impose fines unless and until the Association has sent or delivered written notice to the Owner and/or violator as provided below.

A. Complaint. Any Owner within the community may send the Association a formal, written complaint via either electronic mail or regular mail of a covenant or rule violation, with as much information as is known. Complaints may also be initiated by any member of the Board of Directors or of the Architectural Control Committee. The Board shall have no obligation to consider oral complaints or anonymous complaints or violations that cannot be verified. Endangerment Violations must be reported to the Custer County Sheriff's Office and the sheriff's report submitted to the Board. Upon receipt of a complaint by the Board, if additional information is needed, the complaint may be returned to the Complainant or may be investigated further by the Board. The Board shall have the authority to determine whether a written complaint is justified before continuing with the Notice and Hearing Procedure. The Board will keep the name of the Complainant confidential until and unless it becomes necessary as part of enforcement proceedings for that member to be identified.

B. Notice of Alleged Violation. A Notice of Alleged Violation of any provisions of the Declaration, Bylaws, or Water Decree (W-4062) may be provided in writing to the applicable Owner as soon as reasonably practicable following the receipt of a complaint or discovery by the Board of such violation. The Board may also, at its option, provide a copy of such notice to any non-Owner violator (renter/resident). The notice shall describe the nature of the violation, date upon which compliance must be confirmed, the possible fine that may be imposed, the right to request a hearing before the Board to contest the violation or possible fine, and may further state that the Board may seek to protect its rights as they are specified in the governing legal documents. All notices shall be sent by certified mail. A copy may also be sent by regular mail.

C. Compliance. If the violation has been corrected within the stated time frame, no further action will be taken (with the exception of an Endangerment Violation in which fines will still apply pursuant to fine schedule below).

D. Request of Hearing. If the violation has not been corrected within the stated time frame, the Board may assign a hearing date for the next Board meeting and will notify the Owner of date, time and location by certified and regular mail. The Owner may challenge or contest the particulars of the report in writing and request a hearing prior to the next Board meeting and the Owner will be added the agenda. The request by the Owner for hearing or other written response shall describe the grounds and basis for challenging the alleged violation or the mitigating circumstances. Owner should be aware that fines may start as of the date of the notification letter.

E. Board of Directors to Conduct Hearing. The Board shall hear and decide cases set for hearing pursuant to the procedures set forth herein. The Board may appoint an officer or other Owner to act as the Presiding Officer at any of the hearings. If the owner fails to respond or attend the hearing, the right to a hearing shall be deemed forever waived.

F. Conflicts. Any Board member who is incapable of objective and disinterested consideration on any hearing before the Association shall disclose such to the President of the Association prior to the hearing on the case, if possible, or, if advance notice is not possible, then such disclosure shall be made at the hearing, and the Board member shall be disqualified from all proceedings with regard to the hearing. If disqualification of any Board member(s) results in an even number of remaining Board members eligible to hear a case, the Presiding Officer may appoint an Association member, in good standing, to serve as a voting member of the hearing board.

G. Hearing. The Presiding Officer may grant continuances for good cause. However, Owners should be aware that the fines may start as of the date of the letter so the delayed hearing may increase the amount of fines. At the beginning of each hearing, the Presiding Officer shall establish a quorum, and then provide the Owner the opportunity to provide information to the Association. The complaining parties and the Owner shall have the right, but not the obligation to be in attendance at the hearing. Each party may present evidence, testimony, and witnesses. Unless otherwise determined by the Board of Directors in accordance with the terms of the Colorado Common Interest Ownership Act, all hearings shall be open to attendance by all members of the Association unless the Owner requests to go into executive session. If a complaining party is unable to attend the Hearing, he or she may instead submit a letter to the Board explaining the basis of the complaint.

H. Decision. After all testimony and other evidence have been presented to the Board at a hearing, the Board shall render its written findings and decision, and impose a reasonable fine, if applicable, within 14 days after the hearing. A decision, either a finding for or against the Owner, shall be by a majority vote of the Board of Directors present.

2. Fine Schedule.

A. The following fines are guidelines for violation of the provisions of the Declaration, Bylaws, Water Decree or Policies and Procedures of the Association or of any Supplemental Declarations which the Association may enforce:

First (non-endangerment) violation: Courtesy reminder letter

Second (and endangerment) violation : Warning letter/Notice of Hearing

Third and subsequent violations: Fines levied shall be determined according to the following schedule:

- Water Decree Violations; - \$100 annually, increasing an additional \$100 annually for those continuously failing to respond (First year violation = \$100, second consecutive year violation = \$200 in addition to the previous year's fine, third consecutive year violation = \$300 in addition to the previous years' fines)
 - Failure to install water meter and submit initial reading - Covenant 15
 - Failure to submit annual water meter reading by due dates (December 15th) - Covenant 15
- Property Violations; \$20 per day - Covenants including but not limited the following:
 - Possession of disallowed animals (FFA/4H Violations are subject to their own documented fine schedule) - Covenant 10
 - Open storage - Covenant 24
 - Verifiable nuisance - Covenant 12

- Architectural Violations; Covenants 4-9 - \$300 for initial infraction, \$500 for additional infractions
 - Initiating new construction or any external modification requiring a building permit from Custer County Zoning Office without Board approval - Covenant 4
 - Erecting/altering a fence without Board approval - Covenant 4
 - Failure to maintain continuity of construction or deviations from Board approved plans - Covenants 5-9
 - Once a fine is assessed, it is subject to a \$10 per day per infraction accrual fee until brought into compliance.
- Endangerment Violations - \$5000 - Endangerment Violations must be reported to the Custer County Sheriff's Office and the sheriff's report submitted to the Board. Covenants including but not limited to the following:
 - Violation of Custer County Fire Ban restrictions
 - Burning of refuse or vegetative debris when there is less than three inches of snow coverage - Covenant 13
 - Hunting/discharge of firearms within Blumenau subdivision properties - Covenant 20
 - Fireworks discharge - Covenant 21

B. Continuing violations shall be considered a separate occurrence for each day it continues after the date of the notice of violation. No fine shall be imposed until after opportunity for a hearing however the per diem fine may start as of the date of the notice until such time as the violation is remedied.

C. The Board reserves the right to fine for first violations of rules that involve health and endangerment issues and other violations where a warning may not be deemed necessary by the Board in its reasonable discretion. Additionally, upon prior written notice, the Board reserves the right to levy fines in excess of the above referenced schedule, if the fines set forth in this schedule are not likely to provide effective incentives to induce compliance.

D. The Board may waive all, or any portion, of the fines if, in its reasonable discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the violator coming into compliance with the Declaration, Bylaws, Water Decree or Policies and Procedures of the Association.

E. All fines shall be due and payable upon notice of the fine and subject to the terms of the Collection Policy & Procedures. All fines shall be considered an assessment and may be collected as set forth in the Bylaws and may be subject to a lien against the property. Fines shall be in addition to all other remedies available to the Association pursuant to the terms of the Declaration and Colorado law, including the Association's right to collect attorney fees as authorized by Colorado law.

3. Additional Enforcement Rights. Nothing in this policy requires the Board to assess fines before taking other forms of enforcement.

A. Legal Action. The Association, at any time, may pursue legal action against an Owner to enforce the provisions of the Declaration, Bylaws, Water Decree or Policies and Procedures without first following the preceding notice and hearing procedures, if the Board determines that such action is in the Association's best interests.


B. Self-help Remedies. The Association or its duly authorized agents shall have the power to enter a Lot with a proper Sheriff Office Deputy to abate or remove, using such force as may be reasonably necessary, any structure, animal, thing or conditions that violates the Declaration, Bylaws or the rules provided, however, the violating Owner or resident is given at least 30 days prior written notice requesting that the violation be removed and abated and that the property restored to substantially the same condition as existed prior to the structure, animal, thing or condition being placed on the property and causing the violation. If the Association exercises its right subject to this paragraph, all costs of self-help, shall be assessed against the Owner's Lot and shall be a lien on the Owner's Lot.


C. Suspension of Right to Vote. The right of an Owner to vote shall be automatically suspended if the Owner is in violation of the Declaration, Bylaws, Water Decree, or Policy and Procedures of the Association.

D. Failure to Enforce. Failure of the Association to enforce the Declaration, Bylaws, rules and resolutions will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any of the above referenced governing documents for the Association.

IN WITNESS WHEREOF, the undersigned certify that the Amendment Procedure was adopted by resolution of the Board of Directors of the Association this 28th day of June, 2018.

Blumenau Homeowners Association

By: 
President

Attest: 
Secretary/Treasurer