

SIERRA BROOKS PROPERTY OWNERS ASSOCIATION

RULES ENFORCEMENT & FINE POLICY

This document sets forth Sierra Brooks Property Owners Association's policy for the imposition of disciplinary actions and fines for violations of the Association's governing documents, including, without limitation, the Amended Declaration of Protective Restrictions, Covenants, and Agreements, Bylaws, Rules and Regulations, and any others as may exist and/or be amended from time to time. This policy complies with *Civil Code* Section 4340, et seq. and also Sections 5850 and 5855, as well as the Association's governing documents.

Each member is responsible for complying with the Association's governing documents. Members are also responsible for the conduct of their guests, family, invitees and tenants. Thus, when "member" is used in this policy regarding a violation of the Association's governing documents, it also refers to any activities by that member's family, invitees, guests and tenants.

The Association's enforcement process is as follows:

1. Notice: Notice of violations which are subject to monetary penalties, suspension of privileges, suspension of non-essential services and suspension of voting rights will be given either personally or by first class mail to the member's most recent address as shown on the Association's records. The notice will be sent at least ten (10) days before the hearing date. The form of notice will be similar to the following:

Dear Member:

*The purpose of this letter is to inform you of an alleged violation(s) of the governing documents by you or your lot as follows: (list the CC&Rs, Bylaws or Rules sections which support the conduct being considered a violation)*_____

_____.

*You are being notified pursuant to Civil Code §5855 that the Sierra Brooks Property Owners Association Board of Directors will hold a hearing on: (list date, time and location of the hearing)*_____ *in order to discuss the above alleged violation(s) of the governing documents.*

The Board will consider whether to impose any or all of the following disciplinary measures against you or your lot: _____

_____ (list all the various types of proposed discipline, e.g., fine, suspension of voting rights, suspension of privileges, imposition of reimbursement assessment, etc.)

At the above listed hearing, the Board will review the violation(s) in an executive session hearing. You may, but need not, be present at the hearing. You may present any relevant evidence and you will be given a full opportunity to cross-examine all witnesses testifying against you. You are entitled to bring witnesses that will testify on your behalf. The Board will not allow non-witnesses, including legal counsel, to attend the hearing on your behalf.

Please advise the Association, in writing, at least five (5) days prior to the date of the above listed hearing date whether you plan to attend and whether you will have any witnesses so that the Association can plan accordingly. Please be advised, should you have your legal counsel present, the Association will continue the hearing to allow the attendance of the Association's counsel. This is to put you on notice the Association is represented by counsel.

The Board will inform you within 15 days of the hearing as to the results. Thank you."

2. Hearing: The Board of Directors will hold a hearing, in executive session, regarding the alleged violations of the Association's governing documents. The member will be given the opportunity to be heard, either orally or in writing before the Board. The meetings will be scheduled as needed and will be held at the property. The Board will not hold hearings in an open session in order to protect the Association's legal interests and also the member's privacy.
3. Rescheduled Hearings: If a member is unable to attend the scheduled hearing, they must contact the Board, in writing, in advance of the hearing date to request an accommodation stating the basis of the request for a reschedule. The Board cannot guarantee they will be able to accommodate requests for reschedule, but will endeavor to work with owners upon request. In the event a person fails to appear at a hearing, the Board will review the evidence presented and make its decision accordingly.

4. Correction of Violation: In the event the alleged violation is corrected prior to the hearing day, the Board may, if appropriate, cancel the hearing which shall be in its sole discretion.
5. Conflicts of Interest: If a member of the Board has a conflict of interest (i.e., he or she filed a complaint, or the complaint was filed against the Board member), that director will abstain from voting on the issue.
6. Decision of the Board: Following the hearing, the Board will decide whether or not the member shall be penalized and the amount of the penalty or other type of enforcement sought. Within fifteen (15) days after the conclusion of the hearing, the Board will notify the member of its decision by mail. The Board's decision will specify the fines or other enforcement penalties imposed, and the reasons for the penalties. The penalties may include, without limitation, suspension of privileges and/or monetary penalties.
7. Appeals: The decision may be appealed by submitting, within ten (10) days of the notice of the decision, a written request stating why the decision was flawed. A request which simply states something to the effect of, "I wish to appeal the decision" will be rejected. If a majority of the Board votes to hear the appeal, it will be heard at the next regularly scheduled executive meeting of the Board or at a special meeting of the Board.
8. Monetary Penalties: The Board may impose a monetary penalty as defined in the below table. Failure to pay a monetary penalty may result in increased monetary penalties and/or appropriate legal action against the member. Additionally, the Board may levy a reimbursement assessment against members for expenses incurred by the Association arising out of actions or omissions of such members or their family, tenants, guests, or pets. Such expenses will include but not be limited to: (i) enforcing compliance with the Association's governing documents, (ii) collecting delinquent assessments, (iii) mitigating or repairing damage to Association property or common areas, (iv) attorneys' fees and costs regardless of whether legal proceedings were instituted, and (v) abatement costs related to a Lot that is deemed by the Board to be a nuisance, fire hazard, or safety hazard.
9. Suspension of Voting Rights: The Board may suspend a member's voting rights for failure by members or their family, tenants, or guests to comply with the provisions of the Association's governing documents. Any such suspension will be for a period of time not to exceed thirty (30) days for any non-continuing violation. For continuing violations, the suspension may be imposed for as long as the violation continues. Regular and special assessments will continue to accrue and will be due and payable notwithstanding the suspension of membership rights.

10. Suspension of Services: The Board may suspend a member's right to access non-essential services and also the common areas. The Association will not preclude a member's right of ingress and egress to their Lot. Any such suspension will be for a period of time not to exceed sixty (60) days for any non-continuing violation. For continuing violations, the suspension may be imposed for as long as the violation continues. Regular and special assessments will continue to accrue and will be due and payable notwithstanding the suspension of services. Use of any Association's facilities during a privilege suspension may result in imposition of an additional fine for further violation of the Association's Rules.
11. Right to Stop Work: The Board and its representatives have the right to stop any work that is in violation of its governing documents.
12. Association's Right to Cure: The Association may also cure a violation provided, however, the Association gives the member not less than thirty (30) days prior written notice of the violation and the Association's intent to cure such violation. The Association's expense in curing the violation will become a reimbursement assessment against the member. In case of an emergency, the right of entry and cure will be immediate.
13. Alternative Dispute Resolution: *Civil Code* §5925, et seq. requires that before the Association or a Member files a lawsuit against the other, the filing party must endeavor to submit the dispute to alternative dispute resolution (ADR) if the lawsuit is (i) solely for declaratory or injunctive relief, or (ii) for declaratory or injunctive relief in connection with a claim for money under \$5,000 (other than Association assessments), related to the enforcement of the Association's Governing Documents. The ADR process is initiated by one party serving a "Request for Resolution" upon the other parties to the dispute. If the individual receiving the Request agrees to ADR, the process must be completed within 90 days unless otherwise extended by agreement. The cost of ADR is to be paid by the participating parties. If a civil suit is filed, the filing party must submit to the court a Certificate of Compliance indicating the party has complied with these requirements. Failing to do so would be grounds for challenging the lawsuit. Although the winning party may be awarded reasonable attorneys' fees and costs, the court may consider a party's refusal to participate in ADR. *Failure to comply with the pre-filing requirements of this Section may result in the loss of your rights to sue the Association regarding enforcement of the governing documents.*
14. Cumulative Remedies: Assessment of a monetary penalty or issuance of a warning does not in any way limit the ability of the Association to further seek other remedies or injunction relief or to take appropriate legal action at the expense of the member.

15. Waiver: Any failure to enforce any provision of the Association's governing documents shall in no way be deemed a waiver of the Board's right to do so in the future.
16. Attorneys' Fees and Costs: If the Association is required to take legal action to enforce the governing documents, the prevailing party may be awarded attorneys' fees and costs by the court. In addition, the Association will levy special individual assessment for reimbursement of its attorneys' fees and costs from those Members against whom the Association must employ the services of an attorney to ensure compliance with the Association's governing documents regardless of whether legal proceedings are instituted.

FINE SCHEDULE

As set forth in the schedule of monetary penalties below, monetary penalties for each separate violation of the governing documents will be imposed as follows:

- First Violation** – Warning letter or fine up to \$200 depending on severity of infraction.
- Second violation, same offense** - up to \$400 per violation depending on severity of infraction.
- Third violation, same offense** - up to \$750 per violation depending on severity of infraction.
- Additional violations, same offense** – up to \$850 per violation depending on severity of infraction.
- Continuing violations** – fines will accrue at a rate of \$30 per day until the violation is cured.
- Safety violations – warning or fine up to \$750 depending on severity of infraction.
- Violations posing an imminent hazard to life or property – warning or fine up to \$1000 depending on the severity of infraction
- Failure to correct a violation in response to a warning letter may result in a single fine or continuing fines which may be imposed on a daily, weekly or monthly basis as the Board determines to be appropriate to be effective.
- **The Board reserves the right to impose a fine at any stage of an enforcement process that exceeds the above outlined amounts depending on the type, severity, or frequency of the violation at issue.

IDR POLICY

If there is a dispute between the Association and a member involving their rights, duties or liabilities under the Davis-Stirling Common Interest Development Act, Nonprofit Mutual Benefit Corporation Law or the Association's governing documents, either the Association or any member who is a party to a dispute may invoke the following procedure:

1. The party may request the other party to meet and confer in an effort to resolve the dispute. The request must be in writing.
2. While a member of the Association can refuse a request to meet and confer, the Association may not refuse a request to meet and confer that falls within the above criteria (i.e. must be within the scope of their authority and must be received in writing).
3. Upon receiving a request for IDR, the Association will respond with a letter setting a date for the meeting. That letter will also include language requesting that the owner inform the Association in advance if they plan on bringing a representative to the meeting and a notice stating that bringing an attorney without informing the Association prior to the meeting will result in the rescheduling of that meeting so that the Association's legal counsel can attend.
4. The Board will designate a specific director to meet and confer. Please know, the Board may request the requesting party's consent to appoint more than 1 director to meet and confer in an effort to help expedite an approved resolution which may result in such a meet and confer. The owner is under no obligation to accept the Board's request, and there will be no negative repercussion should the owner reject the request.
5. The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
6. A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the association.
7. An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:
 - a. The agreement is not in conflict with law or the governing documents of

the common interest development or association.

- b. The agreement is either consistent with the authority granted by the Board to its designee or the agreement is ratified by the Board. If the proposed resolution falls outside the Board designee's authority, while the parties may outline the terms discussed, the Board is acting under an express reservation of rights as it pertains to such a proposed set of terms to accept, reject or propose counter-terms thereafter and, as such, is not required to accept the terms as proposed. Should the terms fall within the Board designee's scope of authority to resolve the dispute, the Board shall ratify the agreement.
8. A member may not be charged a fee to participate in the process.
 9. After receipt of a complaint from an owner about another owner (e.g. a noise nuisance complaint), after appropriate investigation, if the Board reasonably determines the issue involves a neighbor-to-neighbor dispute and does not require further response from the Association regarding enforcement of the governing documents, the Association may, but is not required, to offer to facilitate an IDR between the parties pursuant to the above processes and rules. Should either member refuse to participate in the proceeding, the Association will send a letter to all parties informing them the Association will take no further action on this issue unless otherwise needed and/or required. Owners are hereby notified they have a right under the CC&Rs and applicable statutes to seek enforcement of the governing documents against owners who they believe are in violation of same.

ADR POLICY

It is the Association's policy to follow the statutory procedures of the Davis-Stirling Common Interest Development Act, as set forth hereafter, as to Alternative Dispute Resolution. Please take notice:

Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.

Civil Code §5925. ADR Definitions.

(a) "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision making process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this act.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents.

Civil Code §5930. ADR Prerequisite to Litigation.

(a) An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

Civil Code §5935. Request for Resolution.

(a) Any party to a dispute may initiate the process required by Section 5930 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

(2) A request for alternative dispute resolution.

(3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.

(4) If the party on whom the request is served is the member, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

Civil Code §5940. Time to Complete ADR Process.

(a) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(c) The costs of the alternative dispute resolution shall be borne by the parties.

Civil Code §5945. Tolling of Statute of Limitations.

If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

(a) The period provided in Section 5935 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 5940 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 5940.

Civil Code §5950. Certification of ADR Efforts.

(a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions are satisfied:

(1) Alternative dispute resolution has been completed in compliance with this article.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

(3) Preliminary or temporary injunctive relief is necessary.

(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

Civil Code §5955. Stay of Litigation for Dispute Resolution.

(a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

Civil Code §5960. Attorney's Fees.

In an enforcement action in which attorney's fees and costs may be awarded, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

Civil Code §5965. Annual ADR Notice.

(a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.

(b) The summary shall be included in the annual policy statement prepared pursuant to Section 5310.