

VISTA LAKES COMMUNITY ASSOCIATION, INC.
PROTOCOL FOR LEVYING FINES/SUSPENDING USE RIGHTS

Adopted by the Board of Directors January 10, 2019

I. Notice of Violation, Intent to Fine/Suspend Rights and Opportunity for Hearing.

A. Courtesy Letter. A courtesy letter detailing the violation will be sent to the owner allowing fifteen (15) days to correct the violation.

B. Second Notice. A second notice, serving as the Final Warning, will be sent to the owner stating the same violation details as previously communicated, and including fifteen (15) additional days to correct the violation.

C. Fining Notice. If the violation is not brought into compliance within the allotted time frame set forth in the Final Warning, an intent to fine notification will be sent to the violator informing him or her of the violation, the fine amount and a hearing date and time. At least fourteen (14) days' notice will be provided to the violator of a hearing before the Fining/Suspension Committee.

D. Mediation Session. As required by Bylaws Section 3.23, a mediation session shall be offered prior to the hearing date, which session the violator may accept or reject.

E. Committee Eligibility. The Fining/Suspension Committee must consist of at least three (3) Association members/Parcel owners appointed by the Board who are not officers, directors, or employees of the Association or the spouse, parent, child, brother or sister of an officer, director or employee.

F. Quorum. The Fining/Suspension Committee may only conduct the meeting if at least three (3) of its committee members are present (**assuming you have more than three [3] members on the Committee**).

G. Appointment of Chairperson. The Board should select one of the committee members, preferably the Chairperson, to conduct the fining hearing.

II. Fining/Suspension Hearing

A. Call Committee Meeting to Order. Chairperson calls the committee meeting to order.

B. Statement of Allegations; Opportunity to Respond. Chairperson (or someone else selected by the Chairperson) announces:

1. Name of alleged violator;
2. Nature of the violation;
3. Citation(s) of Governing Document provisions being violated;

4. State when the notice of the fining hearing was sent to the violator, and the date, time and place for the fining hearing stated in the notice;

5. State that the alleged violator (or his or her attorney) will have an opportunity to respond to the allegations, and present evidence or other testimony in the violator's defense. Also state that the violator will be given five minutes to respond, but that the violator may request additional time, which will be granted at the discretion of the Chairperson.

C. Association Presents Evidence. Chairperson reviews:

1. The allegations against the owner and/or violators;
2. The previous correspondence issued to the owner/violator describing the violations and action required to correct/cure the alleged violation;
3. Any additional testimony, photographs, documentation, complaints or other evidence presented, and if so, address these with the owner/alleged violator.

D. Owner Given Opportunity to Defend.

1. **Owner Attends Hearing.** If owner (or his/her attorney) is present, the Chairperson should give the owner (or their attorney) the opportunity to respond to the allegations and/or evidence, reminding him or her that they will be given five minutes to speak

2. **Owner Fails to Attend.** If the owner or the owner's attorney fails to appear for the fining/suspension hearing, the Chairperson should acknowledge that the owner was given the notice of the hearing with the date, time and place for the hearing, and that the Owner failed to appear or provide evidence to rebut the Association's allegations. (Please note that the owner is not required to attend nor present evidence, and the Committee may still make a recommendation to fine or not fine (suspend rights or not suspend use rights) the owner based on the evidence presented by the Association).

E. **Committee Questions and Discussions.** Chairperson asks if any of the committee members has any questions for the Association's representative or the alleged violating owner. Then, the Chairperson asks if any other Committee member would like to make any comments before proceeding further.

F. **Raise Motion.** The Chairperson (or any committee member) should raise a motion to make a specific recommendation on which the Committee may vote. Please note that if the Committee is presented with more than one violation for the same owner, each violation will have to be voted on independently. The following are examples of recommendations:

1. **Recommendation to Fine Owner for Violation Committed.** A motion to recommend the Board fine the violating owner should state:

a. **Fine Per Day.** The amount of the fine per day (but no more than \$100.00 per day),

b. **Number of Days.** The number of days the violation has continued to occur after owner was given an opportunity to cure the violation (i.e. Owner notified of the violation on 01/01/2019 to cure by 01/14/2019, the number of days after 01/14/2019 the owner continued to be in violation);

c. **Total Fine to Be Imposed.** The total amount of the fine based on the number of days (but not more than \$1,000.00 for the same violation).

2. **Recommendation To Fine Owner Prospectively if Ongoing Violation is Not Cured Within Specified Time Period.** The recommendation should include:

a. **Deadline To Cure Violation.** The date by which the owner must cure the ongoing violation or the fine will continue to accrue (i.e., ten days from the Board's adoption of the Committee's recommendation);

b. **Amount of Fine Per Day.** The amount of the fine per day if the violation is not cured by the stated date (but not more than \$100.00 per day);

3. **Recommendation to Suspend Use Rights of the Common Areas for Violations Committed.** The recommendation should specify what portions of the common areas the person is not entitled to use and the length of the suspension; however, a suspension of use rights cannot impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress and egress from the parcel, including but not limited to the right to park.

4. **Recommendation against Issuance of Fine/Suspension.** This recommendation should be self-explanatory.

G. **Another Committee Member "Seconds" the Recommendation.**

H. **Committee Votes on Recommendation; Majority Vote Needed.** Each Committee member will vote on the motion raised by stating "Aye" if in favor of the recommendation and "Nay" if opposed. A majority vote of the Committee determines whether the recommendation shall be made. Committee then issues its recommendation to the Board.

I. **Multiple Violations by Same Owner; Other Owners with Separate Violations.** If the same owner has committed other alleged violations submitted to the Committee, the Committee should repeat steps "II.B" through "II.H" above for each alleged violation. If other owners have also been called before the Committee for possible fines or suspensions, proceed with steps "II.B" through "II.H" for each owner and for each separate violation. The Committee may consider conducting each portion of the hearing by addressing each owner in alphabetical order, or if the Board has indicated that a particular violation may be especially controversial or is anticipated to receive substantial debate, the Committee may choose to conduct the less controversial violations first.

J. **Preparation of Committee Minutes.** Based upon the Committee's vote(s) for each recommendation raised, the Committee prepares written minutes of the Committee meeting, indicating the violating owner(s), the violation(s) committed, the recommendation(s) raised, and the outcome of motions on such recommendation(s), and delivers these findings to the President or other Board representative. Please attach those minutes to the Board meeting minutes. The Board may act upon the announced recommendations, but it is important to maintain a record.

K. **Board Considers Fining/Suspension Committee's Recommendation at Subsequent Board Meeting.** At the subsequent Board meeting, preferably held at the conclusion of the Committee Meeting, the Board can address each of the Fining Committee's

recommendations. The Board may then vote whether or not to act on the Fining Committee's recommendation. However, if the Fining Committee recommended against fines or suspensions, the Board **cannot** issue a fine or suspension, but may vote to pursue other remedies as provided in the Declaration.

L. **Board Notifies the Owner of Fine/Suspension.** The Board must send written notice to the violating owner (or their attorney) after the hearing, and the Board's vote to impose the fine or suspension, indicating the outcome of the meeting, including any deadlines for payment and/or compliance and/or the dates of the suspension.