

# Fairway Village Homeowners Association

**Policy Number 100-5**

**Title: CC&R Infractions**

## Rescissions to Past Policy

*This policy rescinds supersedes any and all policies and/or motions passed and/or approved on this subject by the Fairway Village Homeowners Association (FVHA) prior to this 20<sup>th</sup> day of*

*May in the year 2009.*

## **Intent of the CC&Rs:**

It is the spirit and intent of the CC&Rs that they provide a framework by which a pleasing, uncluttered and peaceful environment may be maintained for the enjoyment, pleasure and safety of occupants and their guests in Fairway Village and it is expected that all residents and the Association will act in good faith in their interpretation and enforcement of the CC&Rs. If a violation of the CC & Rs (hereinafter "Infraction") occurs it is the hope that it may be resolved by informal means (e.g., mediation) at the committee level. If, however, informal efforts does not resolve the Infraction the following procedure may be used.

## **Authority:**

The Fairway Village Homeowners Association's Board of Directors ("Board") has the authority to adopt and publish an enforcement policy pursuant to RCW 64.38.020 (Association Powers): **"Unless otherwise provided in the governing documents, an association may: (11) impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules and regulations of the association."**

## **Procedure to Levy Fines:**

RCW 64.38.020 (11) requires the Board to levy monetary penalties after providing a violator with notice and opportunity to be heard. The Fairway Village CC&R Committee will first attempt to informally resolve an Infraction, but if such informal efforts do not resolve the Infraction, the Committee will give notice of the Infraction to the Board, and the Board will then send the homeowner a "Notice of Infraction and Order."

## **Required Contents of Notice of Infraction and Order:**

The Notice of Infraction and Order shall contain the following:

- 1.) Name of the Owner and address of the property on which the Infraction is occurring;
- 2.) A reference to the CC&R provision(s) that is being violated;
- 3.) A description of the Infraction;
- 4.) An Order, explaining what action needs to be taken to remedy the Infraction;

- 5.) Notice that the Infraction shall be sustained, and that the Board will then charge a monetary penalty, as described herein, and/or remedy the Infraction and charge the Owner for all remediation costs, as allowed under the CC & Rs, provided the Owner does not request an appeal before the Board of Directors or in the event the Board sustains the Infraction after an appeal hearing;
- 6.) Notice to the Owner that the Owner has the right to appeal a Notice of Infraction and Order to the Board, by submitting a written request for appeal hearing to the Association's administrative office within ten (10) days of service of the Notice of Infraction and Order. The date of service shall be the day on which the Notice of Infraction and Order was personally served on the property owner or the day in which the Notice of Infraction and Order was deposited in the U.S. Mail by regular U.S. Mail and certified mail, return receipt requested.
- 7.) Notice that the Board shall schedule an appeal hearing within thirty (30) days after the Board receives a written request for an appeal hearing. The Board shall deliver notice to the Owner of the date, time and place of the appeal hearing, by personal service or by delivering such notice via regular U.S. Mail and certified mail, return receipt requested. Notice of the appeal hearing shall be served upon the Owner or mailed to the owner at least fifteen (15) days prior to the appeal hearing.
- 8.) With respect to the date of the appeal hearing, the Board and Owner may stipulate, in writing, to different timelines than those specified in the preceding paragraphs.

#### **Hearing Procedures:**

- 1.) The Chairman of the Board shall conduct the appeal hearing, and shall start the proceedings by reading a description of the Notice of Infraction and Order.
- 2.) The Chairman may also allow testimony in support of the Notice of Infraction and Order.
- 3.) The Owner shall then be given a reasonable time to rebut the accusations in the Notice of Infraction and Order, or allowed an opportunity to contest the corrective action required therein, and to provide testimony in support of the Owner's position.
- 4.) The Board shall then accept any rebuttal testimony in support of the Notice of Infraction and Order.
- 5.) The Board shall render a brief, written decision, affirming, modifying or dismissing all or any portion of the Notice of Infraction and Order within seven (7) days after the appeal hearing.
- 6.) The Board shall deliver its decision either by personal service or by sending the decision to the Owner via regular U.S. Mail and certified mail, return receipt requested.
- 7.) The written decision shall also include specific notice that decisions of the Board are final, unless the Owner appeals the decision to a court of competent jurisdiction within fifteen (15) days of service of the Board's written decision. The day of service shall be the day on which the Board's decision is personally served on the Owner or the day the decision is deposited in the U.S. Mail.

**Penalty Schedule:**

If the Board affirms the Infraction, or if the homeowner fails to appear at the appeal hearing, the Board may assess the following penalties:

\$50.00 per violation in a First Notice of Infraction and Order.

In the event the Owner does not correct the Infraction, or commits the same infraction within twelve (12) months of the first Notice of Fraction and Order, the Board may issue a second, third or subsequent Notice of Infraction and Order, according to the same procedures as outlined above, except that the Board shall increase the penalties for each violation as follows:

\$150.00 per violation in a Second Notice of Infraction and Order;  
\$250.00 per violation in a Third Notice of Infraction and Order;  
\$500.00 per violation in every Subsequent Notice of Infraction and Order.

If the Owner is compliant for twelve (12) months (i.e., does not commit the same Infraction with a twelve (12) period), and then commits the same Infraction after twelve (12) months from the date of issuance of the first Notice of Infraction and Order, the Board shall impose the penalties for a first violation.

Some violations are hard or impossible to correct (i.e. cutting down trees without a permit) and those violations may result in a penalty of \$250.00 the first time they occur. The Board shall adopt a list of violations that shall incur the preceding flat penalty rate for violations that cannot be corrected.

**Adopted by the Board of Directors on:**

(Date) May 20, 2009

(President) 

