



# Summer Hill HOA Violation Fines Policy

Reference: C.R.S. 38-33.3-209.5 and Colorado HB 22-1137

## Article I. Rules for Notice of Violation

The Association Board may impose a fine, penalty, or interest and suspend voting or other rights of an owner, member, or other occupant in the Association as a penalty for any corresponding violation of Homeowners Association CC&Rs, rules and regulations or of the Bylaws or Declaration, (together termed "HOA Rules").

Any non-compliance with the HOA rules that occurs as the result of an owner's tenant, guest or invitee will be deemed the responsibility of the owner of record.

The Association may also receive complaints, in writing, from Owners, Members, an inspector, or any other information source which the Association may investigate for violation.

At its discretion, the Board will serve a "violation notice" on the resident and/or owner.

If a violation is not cured within the required time, and after an opportunity for a hearing, the board may impose fines, late fees, attorney's fees, and administrative fees.

If the Board determines extenuating circumstances arise within a violation, they may, at their discretion, waive or modify the violation notice or otherwise request from the owner a written plan outlining how the violation will be cured. After review, the Board, at their sole discretion, will decide to accept, reject, or offer a compromise on the plan.

## Article II. Violation Notices

1. The Association Board shall contact the unit owner by certified mail, return receipt requested, at the address of record within the Association unless an owner notifies the Association in writing of a different address. Owner is permitted to identify, in writing, another person to serve as a designated contact, and must include, address, phone, email and/or text.
  - a. Association will keep a record of communication, date, time, and method of notice to the unit owner.
  - b. If owner has notified Association of a lease resident, the Association will include resident on all communication by USPS or email.
  - c. Association will provide all correspondence in English unless the owner notifies the Association, in writing, of a different preferred language. The Association will make all commercially reasonable efforts to comply.



- d. A 'violation notice' may be sent to the owner and resident stating verbatim the alleged violation of the Summer Hill CC&R document and containing the following:
  - i. 30 days from mailing date to owner will be time given to address, remediate and cure the violation. If after Board inspection of the unit and/or the owner submits visual proof of remediation, in writing, within 30 days, the violation will be deemed cured on the date the Association sent the notice of violation.
  - ii. The Association, at its discretion, may send a second violation notice providing for an additional 30 days' time for compliance if owner provides evidence of extenuating circumstances.
  - iii. A hearing may be held by an impartial member of the board or association, as determined by the guidelines of the CCIOA, to hear evidence of the alleged violation and decide as to the violation and fines.
  - iv. A fine will be assessed, if after the second notice and hearing, the violation has not been cured.
  - v. Location of the Summer Hill HOA Violation Policy (this document) on the Summer Hill HOA website
  - vi. Location of the Summer Hill HOA CC&Rs on the Summer Hill HOA website
  - vii. Policy next steps including contact information for meeting with or notifying board with visual proof of remedy or cure, additional potential fines if timelines are not met, potential legal action including liens against the property and/or small claims court
- e. If a Violation is determined to threaten public health or safety, the owner will be notified in writing, certified mail, return receipt requested, and given 72 hours to remedy or cure the violation.
  - i. If after 72 hours of notice and inspection of the property, the violation is not cured, HOA may impose fines and pursue legal action.

### Article III. Fines and Assessments

1. The following fines/assessments, late fees and administrative fees shall apply for all violations, plus interest thereon as provided below, plus attorney's fees and costs as applicable. All fines for failure to remedy or cure notified violations beyond the required dates are subject to a penalty due immediately:
  - a. For the first offense: a fine of \$50 if not cured and certified by the Association, within the first 30 days from Violation Notice.
  - b. For the second offense of the same section, violation, or nature within 90 days of the first offense: a penalty of \$150.
  - c. For the third and each subsequent offense of the same section, violation, or nature that occurs within 180 days of the date that a prior violation occurred: a penalty of \$200.



- d. Added to each such fine or penalty, a late fee of no more than 8% per annum, prorated to the date of payment, of the amount of the unpaid fine or late assessment.
- e. Added to each such fine or penalty, a fee of not more than \$300 per violation shall be imposed to offset administering the violations or late payments and imposition and collection of fines, late fees, and penalties.
- f. When the Board receives notice and visible proof that the violation has been cured, or has inspected the violation and found it cured, the board will notify the owner by USPS or email
  - i. The violation has been cured and there will be no further fines or penalties
  - ii. The board will send a detailed accounting of any balance owed including fines paid, interest accrued, administrative and legal fees
- g. HOA will provide owner written notice for all delinquent accounts for any outstanding balances including itemized list of unpaid fines, fees, and charges. First notice will be sent via certified mail, return receipt requested **and** posting the notice on the owner's residence door. Subsequent notices will be sent via regular mail and/or email on record.
- h. Notice will describe nature of delinquency, steps the HOA must take before legal action, steps the owner must take to cure the delinquency, how the payment will be applied against the delinquency, the potential legal action including small claim court and injunctive relief.

## Article IV. Contest and Hearing

1. To contest the validity of a violation notice and/or potential fines or penalties, the owner must mail the completed "contest notice" to the address listed in the violation notice within 30 calendar days of the date on the violation notice.
2. The board may, with or without a hearing and if the owner provides a reasonable basis or extenuating circumstance, remove the violation and/or waive all or a portion of the proposed fines or penalties based on the owner's evidence presented to the board.
  - a. The owner may request a hearing with an impartial decision maker from the board or association, and present witnesses, documentation, or other supporting evidence of their case.
  - b. The impartial decision maker, will meet, review, and determine a contest outcome. The owner will receive final written findings and decisions within a reasonable time and imposed fines, administrative fees and attorneys' fees if applicable. The owner will be notified by certified mail, return receipt requested.
  - c. The owner will have an additional 30 days from contest decision notice to cure the violation and pay fines and related fees. The board may seek legal action at the end of the additional 30 day period if funds are not received.
  - d. When the board receives, within the appropriate timeframe, an owner's contest notice, the board will:



- i. Determine if the owner requests to present evidence to the board in an informal setting to establish that there was no violation or to prove another basis for vacating or reducing the fine and/or the penalty.
- ii. Determine if the owner requests a formal hearing with an impartial decision maker.
- iii. Either the board or the owner may record the informal meeting or formal hearing. But if so, the party recording the proceeding shall provide a copy to the other party upon request.
- iv. Whether an informal meeting or a formal hearing, both the board, the affected owner and any other owner or resident within the affected property shall have the opportunity to present witnesses, documentation and/or circumstantial evidence, and a short argument, before the Board or independent decision maker makes any decision.
- v. Schedule an executive session with an impartial decision maker, if required, at a set date, time, and place to hear whatever evidence the owner, board, or impartial decision maker deems relevant to the violation.
- vi. Notify the owner, at least 10 days in advance, by USPS or email of the meeting date, time, and place. Additionally, the board may request copies of relevant information such as correspondence, invoices, financials, etc. to be brought and may be surrendered, at the meeting or hearing as evidence.

## Article V. Legal and Collections

1. If the board determines, after hearing the contest informally, or receives the hearing decision from the impartial decision maker, an imposed fine or penalty is due, if 2 thirty-day cure periods have been afforded the unit owner for remediation or cure and it, by policy, becomes necessary to pursue legal action:
  - a. Board will send unit owner a notice of delinquency, by certified mail, return receipt requested, specifying a notice of delinquency for unpaid assessments, fines, fees, penalties, or charges.
  - b. Specify whether the delinquency concerns unpaid assessments, unpaid fines, fees, penalties, or charges.
  - c. HOA may not pursue foreclosure for unpaid fines, interest, penalties, or other charges.
  - d. HOA may pursue foreclosure for unpaid assessments and include a description of the legal action the association may take against the unit owner, including a description of the types of matters that the Association or unit owner may take to Small Claims Court including injunctive matters for which the Association seeks an order requiring the unit owner to comply with the CC&Rs, ByLaws, Policies, or other governing documents of the Association.
  - e. Association will provide a written repayment plan that authorizes the owner to repay in equal monthly installments over 18 months, as long as the payment is at least \$25.
  - f. HOA may initiate foreclosure if installment or full payment is not received 30 days after written offer of repayment plan.



- g. The Association is entitled to costs and reasonable attorney fees incurred in any action or suit for a judgment or decree in favor of the Association. The owner subject to such fine or penalty shall owe the HOA the reasonable attorney's fees, or other researching, reporting, or recording fees incurred by the board to represent the HOA in this matter.
- 2. Small Claims Court Limitations
  - a. The Small Claims court has concurrent original jurisdiction with the county and district courts in actions where a party seeks to enforce rights and responsibilities arising under the Declaration, ByLaws, Covenants or other governing documents (HOA Rules) of an HOA in relation to disputes arising from assessments, fines or fees owed where the amount of damage does not exceed \$7500.
- 3. The board acknowledges and endorses the duty to mediate disputes, such as those reflected in violation notices and contest notices. However, such duty to mediate shall not act to delay or defer the imposition of any fine or penalty or the owner's duty to pay the Association's attorney's fees and/or costs incurred prior to or during the mediation process, except as otherwise determined by the board based on special or mitigating circumstances, especially given that the goal of this policy is to gain compliance for the HOA CC&Rs, rather than to impose punishment.
- 4. Use of a Collection Agency or other legal action to collect unpaid assessments or fines will follow the requirements laid out in C.R.S. 38-33.3-209.5(5)(a)
  - a. Before the Association turns over an account deemed to be delinquent for HOA assessments, fines, fees, charges, interest, penalties, administrative or legal fees the owner will be notified by certified mail, return receipt requested.
  - b. Owner will received itemized accounting of payment due, payment plan options, Association contact information and due date for payment.
  - c. That owner action is required to cure the delinquency.
  - d. Define the steps the Association will take, including turning over to a collection agency or further legal action, if owner fails to cure delinquency within 30 days.
  - e. Defined legal remedies available to the HOA pursuant to the HOA's governing documents and Colorado law.
- 5. Fines, interest, penalties and related administrative or legal fees because of a CC&R violation including Annual HOA Fee or Special Assessment Fee shall be accounted for in a single separate line item on the Summer Hill HOA financial books and may be allocated for administrative, legal or accounting services as required.
- 6. The foregoing notice and grace periods will not be necessary to impose fines, late fees, administrative fees, or interest for nonpayment of an annual or special assessment imposed in accordance with the Summer Hill HOA annual dues declaration at the Annual Meeting and subsequent dues and special assessment announcements and associated billing cycle.



- a. The annual HOA dues invoices are mailed out in late April or early May with an option for patio homes to pay ½ of dues by June 1, a statement reminder in July, and the balance due by August 1. That option is not available for large lot homes.
  - b. All invoices state the balance is subject to (8% annual) finance charge prorated per month for any amount not received by August 31 of that year.
  - c. Monthly statements for unpaid annual dues balances are sent out each month beginning September 1 of the year in which they are due.
  - d. Balances unpaid in January of the following year receive an itemized statement by certified mail, return receipt requested, along with a letter stating HOA may turn the account over to a collection agency, file for payment in small claims court or file a lien on the property if dues remain unpaid.  
A copy of Article IV Section 4.01 Creation of the Lien and Personal Obligation of Assessments is included.
7. Waivers: The Association is authorized modify or waive time periods, fines, or other procedures in this policy on a case-by-case basis as the Board determines to be necessary, in its sole discretion as outlined in the CCIOA.

Adopted by the board of directors this \_\_\_\_9th\_\_\_\_ day of \_\_\_\_February\_\_\_\_, 2023.

Signatures of the Summer Hill HOA Board of Directors