

Mount Ellis Phase IIA Home Owner's Association
BOARD OF DIRECTORS
Covenant Fining Rules and Regulations
032816

RESOLUTION: Policies and Procedures for the Covenant and Rule Enforcement

Date of Board Adoption: _ Document NO: 2016 01

Effective Date: Dates Revised: 032816

Rules and Regulations

WHEREAS, The Mount Ellis Phase IIA Home Owner's Association (MEHOA) is a Montana non-profit corporation and has all the powers of a non-profit corporation enumerated and set forth in §35-2-113 et. Seq., MCA and the purpose of the corporation is formed exclusively as a home owners association within the meaning the section 501(c)(4) of the Internal Revenue Code of 1986, and its regulation as the same now exists or as it may be amended from time to time.

WHEREAS, there are a number of covenant violations in the Community, which HOA has the duty to ensure that the membership follows the covenants, and the current policy of writing a letter to give notice is not effectively bringing people into compliance.

WHEREAS, MEHOA has reviewed its current policy and compared it with other Associations and finds that implementing a notice and fine schedule with an appeal process is the best way to effectively bring people into compliance.

WHEREAS, MEHOA is a small HOA, with only 28 homes, meaning that its enforcement policy is less onerous and formal than those in larger, more complex HOA's, and requires a simple, direct, and transparent system of compliance.

WHEREAS, MEHOA has a Management Company, responsible for complaint management (currently Luna Properties, attn: Kathi, 40 E Main St #210, Bozeman, MT 59715 (406) 582-7490.

MEHOA hereby adopts the following procedures to be followed when enforcing the covenants and rules of the Association:

1. The Board representative is a Board designated individual, termed the complaint coordinator (aka Board officer). The Board shall have the sole discretion in appointing an individual or committee to investigate, hold hearings, and make final decisions, as discussed below. If the designated individual is not available, any Board member can fulfill this function.
2. Reporting Violations. Complaints regarding alleged violations may be reported by an owner or resident within the community, a group of owners or residents, the Association's management company, if any, Board member(s) or committee member(s) by submission of a written complaint. An email complaint to the Management Company or any member of the Board is sufficient notice. Board members should forward complaints to the Management Company
3. Complaints.
 - a. Complaints by owners or residents shall be submitted to the Board of Directors and/or Property Manager. The complaining owner or resident shall have observed the alleged violation and shall identify the complainant ("Complainant"), the alleged violator ("Violator"), if known and set forth a statement describing the alleged violation, referencing the specific provisions which are the alleged to have been violated, when the violation was observed and any other pertinent information. Non-written complaints or written complaints failing to include any information required by this provision may or may not be investigated or prosecuted at the discretion of the Association.

- b. Complaint by a member of the Board of Directors, a committee member, or the manager, if any, may be made in writing or by any other means deemed appropriate by the Board if such violation was observed by the Director or manager.
4. Investigations. Upon Receipt of a complaint by the Association, if additional information is needed, the complaint may be returned to the Complainant or may be investigated further by a Board designated individual or committee. The Board shall have the sole discretion in appointing an individual or committee to investigate the matter.
5. Initial Warning Letter. If a violation is found to exist, a warning letter or email shall be sent to the Violator explaining the nature of the violation including the date for required compliance, and a notice of the potential for fine. The duration of the compliance period will depend on the complexity of the violation. The Violator has the calendar days specified in the letter to come into compliance. With exception of Road damage or debris: here, the violator has 24 hours to comply, after which the Board can direct the repair of the damage or cleaning debris, and may charge the owner for this operation.
6. Violation After Initial Warning Letter. If the alleged Violator does not come into compliance as of the DATE required as specified in 5 above, this will be considered a second violation. This violation will be subject to a fine. A second letter or EMAIL shall then be sent to the alleged Violator, providing notice, the fine invoice, and an opportunity for a hearing, pursuant to this Policy. The letter shall further state that the alleged Violator is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing or EMAIL within 14 days of the date of the second violation letter. *All responses must go to the Management Company.*
7. Notice of Hearing. If a hearing is requested by the alleged Violator, the Board representative conducting such hearing, may serve a written notice of the hearing to all parties involved at least 7 calendar days prior to the hearing.
8. Hearing. At the beginning of each hearing, the presiding officer shall introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative may, but is not required to, make an opening statement, present evidence and testimony, present witnesses, and make a closing statement. The presiding officer(s) may also impose such other rules of conduct as may be appropriate under the given circumstances. Neither the Complainant nor the alleged Violator is required to be in attendance at the hearing. The Board officer shall base its decision solely on the matters set forth in the Complaint, results of the investigation and such other credible evidence as may be presented at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all Owners. After all testimony and other evidence has been presented at a hearing, the Board shall, within a reasonable time, not to exceed 10 days, render its written finding and decision, and impose a fine, if applicable via either written letter or email. A decision, either a finding for or against an Owner, shall be by a majority of the Board members present at the hearing. Failure to strictly follow the hearing procedures set forth above shall not constitute grounds for appeal of the hearing committee's decision absent a showing of denial of due process.
9. Failure to Timely Request Hearing. If the alleged Violator fails to request a hearing within 14 days of the second letter, or fails to appear at the hearing, the Board may make a decision with respect to the alleged violation based on the Complaint, results of the investigation and any other available information without the necessity of holding a formal hearing. If a violation is found to exist, the alleged Violator may be assessed a fine pursuant to these policies and procedures.
10. Notification of Decision. The decision of the Board, committee or other person, shall be in writing or email and provided to the Violator and Complainant within 14 days of the hearing.
11. Fine Schedule. The following fine schedule is adopted for all recurring covenant violations.
 - a. First Violation: Warning Letter

- b. Second Violation: \$50.00, retroactive to the date of the initial warning letter and \$10 per week there after (after notice and hearing), with exception of Road damage or debris: for this, the fine is \$100.

- 12. Continuous Violation. Continuous Violations are defined as violation of Owner obligations that are materially uninterrupted by time. After 7 days from the date of the initial warning letter (or 24 hours for road damage or debris), each day of noncompliance constitutes a separate violation. For example, the failure to store a camper or trailer or the repeated nightly parking in the street.

If an Owner is determined as having a continuous violation, in accordance with the terms of this Policy, such Owner may be subject to a weekly fine of \$10 per week per each covenant violation, retroactive to the date specified on the initial warning letter, if not corrected following a notice and opportunity for a hearing as set forth above.

- 13. Waiver of Fines. The Board may waive all, or any portion, of the fines, if in its sole 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 and staying in compliance with the Articles, Declaration, Bylaws and Rules.
- 14. Other Enforcement Means. This fine schedule and enforcement process is adopted in addition to all other enforcement means which are available to the Association through its Declaration. Bylaws, Articles of Incorporation and Montana law. The use of this process does not preclude the Association from using any other endorsement means.
- 15. Supplement to Law. The provision of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Montana.
- 16. Deviations. The Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.
- 17. Amendment. This policy may be amended from time to time by the Board of Directors.
- 18. The Board interprets this resolution, and its decision is final;
- 19. This Document is effective the date it is adopted.
- 20. This document supersedes all other Policies adopted by the MEHOA with regards to document policies and procedures for covenant and rule enforcement.