

**HILL POND ON SPRING CREEK HOMEOWNER'S  
ASSOCIATION **POLICY FOR ENFORCEMENT OF  
COVENANTS AND RULES**  
(INCLUDING NOTICE AND HEARING PROCEDURES AND  
SCHEDULE OF FINES)**

**1. Introduction.**

The Board of Directors (“Board”) of Hill Pond on Spring Creek Homeowner’s Association, a Colorado nonprofit corporation (“Association”), acting pursuant to the powers set forth in the Association’s Bylaws, Articles of Incorporation, the Declaration of Covenants, Conditions and Restrictions for Hill Pond on Spring Creek, Second Filing, P.U.D. (“Declaration”) (such documents being collectively referred to as the “Association Documents”), and the Colorado Common Interest Ownership Act, as amended (“CCIOA”), has enacted the following Policy effective as of the date set forth above. Unless the context otherwise indicates, capitalized words and terms shall have the meanings set forth in the Association Documents and, if not defined in the Association Documents, then as set forth in CCIOA. This Policy supersedes any previously adopted Policy on the same subject matter.

**2. Policy Purposes.** The purposes of this Policy are to:

- 2.1 Set forth procedures and rules to promote the consistent enforcement of the Association Documents;
- 2.2. Provide a framework for mediation of disputes between the Association and Owners, except those related to collection of past due assessments or matters that may require an injunction, restraining order or protection order; and
- 2.3 Provide Owners with notice of the schedule of fines for violations of the Association Documents.

### 3. **Mediation.**

3.1. **Request for Mediation.** In the event of a dispute between the Association and any Owner, except disputes regarding past due assessments or any matter that may require an injunction, restraining order or protection order, either the Association or an Owner may request mediation by an independent, third-party mediator. A request for mediation (“Request”) must be in writing and mailed to the Association or Owner by U.S. Mail, first class postage prepaid to such address for the recipient shown by the public records. The Request shall be considered effective three days following deposit in the mail. The parties shall make reasonable efforts to select a mediator and schedule mediation of the dispute within 30 days after the effective date of the Request, or such longer time as the parties may agree upon in writing. If the mediation does not occur within 30 days (or longer if so agreed in writing), or the parties are unable to settle the dispute through mediation, the Association or Owner may pursue any other lawful remedy allowed by the Association Documents or Colorado law.

3.2 **Mediation Fees and Costs.** Fees and costs associated with the mediation, including payment of fees to the mediator, shall be paid as follows:

3.2.1 The requesting party shall pay the mediator in advance for the first two hours of mediation.

3.2.2 If the mediation lasts more than two hours, the mediator’s fees for time beyond the first two hours shall be divided equally between the Association and Owner(s) and paid at the conclusion of the mediation.

3.2.3 The Association and any participating Owner may be represented by their respective attorneys at the mediation. Each party shall pay their respective attorney fees associated with the mediation.

3.2.4 If an Owner requests mediation but fails to appear at the date and time scheduled for the mediation, the Owner shall pay all expenses of the Association related to the mediation, including attorney fees and costs, and those expenses shall be assessed against the Owner as part of the Owner's Assessment.

3.3. Continuation of Hearing and Imposition of Fines. A request for mediation shall not suspend or stay any hearing or imposition of fines in accordance with the Fine Policy set forth below. Any fines imposed prior to or after a request for mediation shall remain in place or continue to accrue (in the event of a continuing violation where a daily fine is imposed) pending mediation of the dispute. Unless otherwise agreed at mediation, such fines shall remain legally collectable as Assessments in accordance with the Association Documents and Colorado law.

3.4. Continuation of Legal Proceedings. If a lawsuit for the collection of Assessments or enforcement of the Association Documents is commenced prior to receiving a request for mediation, such request shall not suspend or stay the lawsuit. The lawsuit shall continue forward, in addition to the mediation process described above, unless otherwise agreed upon by the parties in writing.

#### **4. Fine Policy, Notice and Hearing Procedures.**

4.1 Fine Policy. The Association may levy fines for violations of the Association Documents in accordance with the following fair and impartial fact-finding process which is designed to determine whether the alleged violation actually occurred and whether the owner allegedly violating the Association Documents is the one who should be held responsible for the violation.

4.2 Notice of Violation (“Notice”). The Notice of Violation process is as follows:

4.2.1 The Association or any member of the Association may report a violation. If reported by a member, the member should report the violation in writing to the Association at the Association’s address. If the violation is of the type that can be readily photographed, any report of the violation should include one or more photographs of the violation.

4.2.2 The Board will verify the violation and issue a written Notice to the violating Owner. The Notice will describe the nature of the violation, the time frame for correcting the violation (expressed as a certain number of days after the effective date of the Notice as determined below), and state that the Association may seek to remedy the violation and otherwise protect its rights as specified in the Association Documents and as provided by law.

4.2.3 The Notice, together with a copy of this Policy, will be sent via U.S. Mail, first class postage prepaid, addressed to the last registered address of the Owner as listed in the Association’s records. The Notice will be considered effective three days after it is deposited in the mail.

4.2.4 The Owner receiving the Notice then has the amount of time specified in the Notice to correct the violation.

4.2.5 If the violation is not corrected within the specified time, a fine is levied starting on the first day after the time period for correcting the violation expires, subject to the Request for Hearing provisions below.

4.3 Requests for Hearing. Any Owner receiving a violation Notice has the right to request a hearing before the Board as the Association's impartial decision-maker. To request a hearing, the Owner must contact the Association in writing within four days after the effective date of the Notice. The Association's Board shall then set a date for the hearing. If the hearing, for whatever reason, cannot be held prior to the date when the fine is otherwise scheduled to commence, the date the fine begins shall be extended to the day following the hearing. No Board member may have any direct personal or financial interest in the outcome of the hearing process. A Board member shall not be deemed to have a direct personal or financial interest in the outcome if the Board member will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the Association. Any Board member who does have any direct personal or financial interest in the outcome of the hearing process shall not participate in the hearing. The purposes of the hearing are to (1) determine if the Owner receiving the Notice should be held responsible for the alleged violation, (2) evaluate any mitigating circumstances, and (3) make arrangements for bringing the violation into compliance over a period of time if warranted.

The hearing process will not and cannot be used to determine if a particular provision of the Association Documents is desirable.

4.4 Hearing Procedure. The general procedure for the hearing is as follows:

4.4.1 The presiding Board member shall (1) establish a quorum, (2) explain the Fine Policy and procedures, and (3) describe the nature of the violation as specified in the Notice.

4.4.2 The Owner may then provide rebuttal to the Notice using witnesses or any other information deemed relevant and necessary.

4.4.3 After all testimony and other evidence has been presented, the Board shall decide whether the Owner should be held responsible for the alleged violation. If the Board finds that the Owner has violated the Association Documents, a fine shall then be assessed by the Board or mutually agreeable arrangements made with the Owner to ensure correction of the violation and compliance in the future. If the Board finds that the Owner should not be held responsible for the alleged violation, then (1) no fine shall be assessed, and (2) the Association shall not allocate to that Owner's Association account any of the Association's costs or attorneys' fees incurred in asserting or hearing the alleged violation.

4.5 Fines. If an Owner fails to timely correct a violation, the Board has the right to assess a one-time fine in the amount of \$100 - \$5,000 (as the Board deems reasonable and necessary to promote correction of the violation). In addition, the Board may assess daily fines for any continuing or persistent violation in the amount of \$15 - \$50 per day (as the Board determines to be reasonable and necessary to promote correction of the violation) until the Owner has corrected the violation. The Owner is responsible for notifying the Association in writing if and when the violation has been corrected. Any daily fine shall continue at

the stated rate until the earlier of (a) the date on which the Owner gives written notice of correction, regardless of when the violation was corrected, or (b) 120 days after commencement of the daily fine.

4.6 Injunction. If the violation has not been corrected within 120 days after commencement of a daily fine, or after imposition of a one-time fine, the Association may commence the necessary legal proceedings under the Association Documents or under Colorado law to compel correction of the violation as well as to recover any unpaid fines, court costs, attorneys' fees and other Association expenses arising from the violation. Nothing in this paragraph shall preclude the Association from commencing legal proceedings to correct the violation prior to expiration of the 120-day period.

4.7 Collection of Fines. Assessed fines shall be billed to the Owner by U.S. Mail, and are legally collectable as Assessments in accordance with the Association Documents and Colorado law. The fines are the personal obligation of the violating Owner and, in addition, constitute a lien against such Owner's property. Furthermore, the violating Owner is responsible for all costs and reasonable attorney fees incurred by the Association as a result of the violation.

4.8 Repeat Violations. A "repeat violation" is a violation committed by an Owner which is the same as the original violation committed by that Owner, and which occurs within twelve months after the original violation. A repeat violation is considered a continuation of the original violation, and thus an Owner committing a repeat violation is not entitled to the same hearing procedures set forth above. However, the Association shall provide Notice of the repeat violation to the Owner in accordance with Section 4.2 above. If the repeat violation has not been corrected within the time period specified in the Notice for correction of the violation, then the fine (which will be

determined by the Board and may be up to double the amount of the fine assessed for the original violation) will commence upon the expiration of the correction time period, notwithstanding any other provisions of this Fine Policy to the contrary. An Owner committing a repeat violation shall have no right to a hearing on such repeat violation before the Board.

4.9 Fines Not Exclusive Remedy. Fines levied under this Policy are not the Association's exclusive remedy for addressing a violation. Nothing in this Fine Policy precludes the Association from pursuing any other remedy provided under the Association Documents or under Colorado law for correcting the violation.

5. **Variances.** The Board may from time to time vary from the requirements set forth in this Policy if the Board determines in its sole discretion that such variance is reasonable under the circumstances.

6. **Amendment.** This Policy may be amended from time to time by the Board.

#### CERTIFICATION

The undersigned, being the duly elected and acting President or Secretary of the Hill Pond on Spring Creek Homeowner's Association, a Colorado nonprofit corporation ("Association") certifies that the foregoing Policy for Enforcement of Covenants and Rules (Including Notice and Hearing Procedures and Schedule of Fines) was approved by the vote of a majority of the Association's Directors at a meeting of the Association's Board of Directors held on 3/26/18.

Hill Pond on Spring Creek Homeowner's Association, a Colorado nonprofit corporation

By: Margaret Murphy, President