

**PROTOCOL FOR ENFORCING
GOVERNING DOCUMENT VIOLATIONS
Whitehawk Ranch Homeowners' Association**

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ENFORCEMENT PROCEDURE

For any alleged violation of the governing documents, these procedures will be followed:

- Step 1.** Any Resident, Member, or Director claiming a violation must complete, sign, and submit an Alleged Violation Report to the Board of Directors at a Board meeting, or to the Association's administrator during regular business hours. No anonymous Alleged Violation Reports will be considered.
- Step 2.** Determine, in an executive session meeting, if the alleged violation has possible merit and, if so, proceed with Step 3. If not, indicate why further action was not taken in the executive session minutes.
- Step 3.** Send a Notice of Intent to Impose Discipline to the Member stating the alleged violation and the Member's right to appear before the Board of Directors at a hearing in on at least 10 days' notice by any means authorized under Civil Code §4040 for individual delivery, before imposing a monetary penalty (fine) and/or any other discipline. No courtesy notice is required.
- Step 4.** The disciplinary hearing with the Board of Directors shall be held in executive session unless the Member requests it be held in an open Board meeting. The Member may be heard, orally or in writing, and may present evidence, including witness testimony and documents.
- Step 5.** If the Member has violated the governing documents, the Board may exercise any appropriate option allowed under the governing documents or the law:
- a. Seek any legal remedy, including, without limitation, imposing a lien and/or foreclosure on the member's property, where allowed by law;
 - b. Impose one or more monetary penalties (fines);
 - c. Correct (or cause to be corrected) the violation and assess the member for the costs and expenses of doing so, including attorneys' fees when allowed by law;
 - d. Suspend voting rights and/or other membership privileges, such as recreational common area use rights, effective no sooner than five (5) days after the notice of disciplinary action; and/or
 - e. Initiate Internal Dispute Resolution and/or Alternative Dispute Resolution as allowed by law.
- Step 6.** The Member will be notified on any disciplinary action rendered by the Board of Directors within 15 days after the decision.

ALLEGED VIOLATION REPORT

Date: _____

1. **Person Making Report
(Complainant)**

Name: _____
Address: _____
Phone No: _____

2. **Time, place and nature of alleged violation (fill in)**

Date: _____ Time: _____ Location: _____

Nature of Violation: _____

3. **Description of Violator (Respondent)**

Name: _____
Phone: _____
Address: _____

4. **Additional Witnesses**

Name: _____
Address/Phone: _____
Name: _____
Address/Phone: _____

5. **Other Evidence (Photographs, Documents, Etc.) Supporting the Violation**

6. **Specific Governing Document Violated (Cite exact provision of Declaration of Covenants, Bylaws, Rules or Regulations violated)**

7. **Original Complainant**

The person making this complaint acknowledges that he or she must appear as a witness at any formal hearing or the Board may refuse to consider the alleged violation, unless the violation can be independently corroborated.

(Signature)

NOTICE OF INTENTION TO IMPOSE DISCIPLINE

To Member: _____

Please be advised that you are given notice that the Board of Directors will hold a hearing on:

_____ (Date)

_____ (Time)

_____ (Place)

to consider the imposition of a monetary penalty (fine), suspension of voting rights or the right to use recreational common area, or other permissible discipline against you concerning an alleged violation of the Association's governing documents, that is:

You may attend the hearing and be heard orally or in writing before the Board of Directors and to present any witnesses or other evidence on your behalf.

The hearing will be held in executive session whether you are present or not and whether you contest the alleged violation or not. Upon your request, the hearing will be held in an open Board meeting instead of in executive session.

Please acknowledge your receipt of this notice and indicate, by checking the box indicating whether you will contest the alleged violation or not.

Very truly yours,

BOARD OF DIRECTORS

I acknowledge receipt of this notice and:

☐

I will not oppose the alleged violation.

☐

I will oppose the alleged violation.

Dated: _____

Signed: _____

PROCEDURE FOR MEMBER HEARING

1. Statement of alleged violation(s) by acting chairperson.
2. Presentation of evidence.
 - a. Each party (including the Board where appropriate) may make an opening statement, orally or in writing, starting with the complaining party's case;
 - b. Each party may produce documentary evidence and testimony and to cross-examine the opposing party and the opposing party's witnesses;
 - c. Each party may make a closing statement, orally or in writing;
 - d. Formal rules of evidence will not apply and all evidence should be considered. The Board will give whatever weight it feels is appropriate to each piece of evidence;
3. Any party may choose not to exercise any rights during the hearing process (e.g. not give an opening statement). The Board may specify other reasonable rules for the hearing, provided the alleged violator can confront and cross-examine the accuser and the witnesses (if their personal knowledge is necessary to prove the claim), and other corroborating evidence of the violation, and be heard and present evidence in his or her own defense.
4. The alleged violator, complaining party and witnesses are excused. If the complaining party is a director with no personal stake in the dispute, such director may remain.
5. Discussion and decision by the Board, or, that the matter will be taken under submission with a determination within 35 days after the hearing. Notice to member within 15 days of imposing disciplinary action, if any. No notice is necessary if the Board takes no disciplinary action. The accuser is not entitled to any notice of action taken or not taken.
6. Adjournment.

Documentation

Name of Member: _____ Phone Number: _____

Address: _____

Factual Findings on Issues: _____

Board ruling on any discipline to be imposed: _____

Additional Comments: _____

Date: _____ By: _____
SIGNATURE OF CHAIRPERSON

MONETARY PENALTY (FINE) SCHEDULE

1. Specific Violations

(a) Unauthorized removal from a Lot of trees 6" to 12" in diameter	\$500.00 per tree
(b) Unauthorized removal from a Lot of trees more than 12" in diameter	\$1,800.00 per tree
(c) Unauthorized tree removal up to 12" in diameter from the Common Area	\$500.00 per tree
(d) Unauthorized tree removal more than 12" in diameter from Common Area	\$1,800.00 per tree
(e) Failure to properly dispose of tree debris includes limbs, bark or slash	\$1,000.00
(f) Initiating construction of additions or decks without ARC approval	\$1,800.00
(g) Failure to remove diseased or dead trees within 30 days of notification	\$1,000.00
(h) Failure to comply with CC&Rs Article 7, R&R #B-16 "Right to Lease"	\$1,800.00
(i) Unauthorized commercial delivery or temporary storage structures	\$500.00
(j) Damage to a neighboring Lot caused by one or more of the above violations	\$500.00

- Any tree violation may result in the fine stated above in addition to the requirement of a like replacement.
- Tree diameter size is measured five (5) feet above the ground.

2. Firewise Community Standards Violations

- a. Following a 30-day notice period, if a Member fails to create a defensible space around the home as prescribed by the Architectural Standards, a fine of \$1,000.00 may be levied.
- b. Following a 30-day notice period, if a Member fails to remove hazardous fuels from the Lot as prescribed by the Architectural Standards, a fine of \$2,000 may be levied.

3. For all other violations of the governing documents, if the Board finds a violation, a monetary penalty (fine) of up to \$200.00 may be imposed for each separate violation of the governing documents. In addition:

- a. If a Member violates the same provision of the governing documents on two separate occasions within any 12-month period, the Member will be subject to a monetary penalty (fine) of up to \$400.00 for the second offense.
- b. If the Member violates the same provision three or more times within any 12-month period, the member will be subject to monetary penalties (fines) for the third and subsequent violations of up to \$600.00 each.

4. For continuous violations of the governing documents, whether architectural, or constituting a nuisance or otherwise:

- a. Continuous violations will be considered a violation every day from the first day of the violation until remedied in full.
- b. Continuous violations are subject to a monetary penalty (fine) of up to \$100.00 per day for every day of the violation, whether consecutive or not, until the violation is remedied, subject to a maximum monetary penalty (fine) of \$3,000.00 per calendar month.

5. Multiple violations, whether non-continuous or continuous, may be addressed in one or more Notice(s) of Intent to Impose Discipline to the Member and may be the subject of and heard at one or more executive session or open Board meeting hearing(s).
6. Unless prohibited by other governing documents, and if allowed by law, the Board may take legal action or correct, remedy or cure a violation, and seek a reimbursement assessment against the Member, or file a memorandum of costs or motion for attorneys' fees, to recover costs, expenses and attorneys' fees incurred by the Association.
7. If a violation is found which causes the Association to incur a financial obligation or expense, then the Member responsible for the violation will be subject to a reimbursement assessment in the amount of the obligation or expense incurred by the Association after proper notice and a hearing to the extent allowed by law.
8. A monetary penalty (fine) imposed by the Association as a disciplinary measure for failure of a Member to comply with the governing documents, may be treated as and is hereby an assessment that may become a lien against the Member's separate interest, but such lien may not be enforced by the sale of the interest under Sections 2924, 2924b, and 2924c (non-judicial foreclosure).