

THE RESERVE AT MARIANA BUTTE HOMEOWNERS' ASSOCIATION
POLICY FOR ENFORCEMENT OF COVENANTS AND RULES
(INCLUDING NOTICE AND HEARING PROCEDURES AND SCHEDULE OF FINES)
Effective: 3-02, 2023

1. Introduction.

The Board of Directors ("Board") of The Reserve at Mariana Butte Homeowners' 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 The Reserve at Mariana Butte ("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, in accordance with the Association Documents and CCIOA, specifically as amended by HB 22-1137;
- 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 recurring 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, if verified, the Board shall issue a written Notice to the violating Owner.

4.2.2(a) For covenant violations that threaten public safety or health, the Notice will describe the nature of the violation, advise the Owner that he/she has seventy-two (72) hours to correct the violation or may be fined 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. At the conclusion of the seventy-two (72) hour period, the Association shall inspect the Owner's property to determine if the violation has been corrected. If the violation has not been corrected, the Association may impose fines as set forth in Section 4.5 below and take other legal action the Association deems appropriate to correct the violation.

4.2.2(b) For covenant violations that do not threaten public safety or health, the Notice will describe the nature of the violation, advise the Owner that he/she has thirty (30) days to correct the violation or may be fined 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. The Notice shall be sent to the Owner by certified mail, return receipt requested. No later than seven (7) days after the conclusion of the thirty (30) day period, the Association shall inspect the Owner's property to determine if the violation has been corrected. If the violation has not been corrected, the Association shall send a second Notice to the Owner advising that the violation has not been corrected and that the Owner has an additional thirty (30) days to correct the violation or may be fined 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. The second Notice shall also be sent to the Owner by certified mail, return receipt requested. If at the conclusion of the second thirty (30) day period the violation has still not been corrected, the Association may impose fines as set forth in Section 4.5 below and take other legal action the Association deems appropriate to correct the violation.

4.2.2(c) Before the expiration of either the first or the second thirty (30) day period to cure the violation, the Owner may send the Association written notice that the violation has been cured, with visual evidence that the violation has been cured and the violation will be deemed cured as of the date the Owner sends the written notice. If the written notice from the Owner does not include visual evidence of the cure, then the Association shall inspect the Owner's property as soon as practicable to determine if the violation has been cured.

4.2.2(d) If the Owner does not provide written notice to the Association that the violation has been cured before the expiration the second thirty (30) day period to cure the violation, then within seven (7) days after the expiration of the second thirty (30) day period the Association shall inspect the Owner's property as soon as practicable to determine if the violation has been cured. If upon inspection the Association determines that the violation has not been cured the

Association may impose fines as set forth in Section 4.5 below and take other legal action the Association deems appropriate to correct the violation.

4.2.2(e) If the Association determines the violation has been cured, the Association shall promptly notify the Owner, in English and such other preferred language as designated by the Owner, that the Owner will not be further fined with regard to the violation and provide notice of any outstanding fine balance owed by the Owner to the Association.

4.2.3 The Notice, together with a copy of this Policy, will be sent via U.S. Mail, first class postage prepaid, return receipt requested, 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 Any Owner may designate in writing that all Notices regarding covenant violations are to be in a language other than English and, in such case, the Association must provide the Notice to the Owner in the preferred language as designated by the Owner and in English.

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 seven (7) days after the effective date of the Notice. The Association's Board shall then set a date for the hearing as soon as is practicable. 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 as set forth in Section 4.2 above, then the Board shall fine the Owner \$100.00 and written notice of the fine shall be provided to the Owner ("Initial Fine Letter"). If the violation is not corrected within ten (10) days of the date of the Initial Fine Letter, then the Board shall fine the Owner an additional \$150.00 and written notice of the additional fine shall be provided to the Owner ("Second Fine Letter"). If the violation is still not corrected within ten (10) days of the date of the Second Fine Letter, then the Board shall fine the Owner \$250.00 and written notice of the fine shall be provided to the Owner. In the alternative, the Association may fine the Owner the sum of \$50.00 every other day, up to a maximum of \$500.00, until the violation is corrected. In no circumstance may the Owner be fined in excess of \$500.00 per violation. The Owner is responsible for notifying the Association in writing if and when the violation has been corrected.

4.6 Injunction. If the violation has not been corrected within 60 days after the Notice, 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 60-day period.

4.7 Collection of Fines. Assessed fines shall be billed to the Owner pursuant to the Association's policy for Collection of Unpaid Assessments 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

but shall in no event exceed \$500.00 per 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 Reserve at Mariana Butte Homeowners' 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 2-16-2023.

The Reserve at Mariana Butte Homeowners' Association, a Colorado nonprofit corporation

By: Michael Bogard 3-2-2023
secretary