

# **LITTLE BEAR HOMEOWNERS ASSOCIATION**

**PO Box 289  
Gallatin Gateway, MT 59730**

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## **PROCEDURES for ENFORCEMENT of COVENANTS**

Final Version – May 12, 2016

### **Statement of Purpose**

The purpose of these *Procedures for Enforcement of Covenants* (Procedures) is to provide guidelines for the Board of Directors (Board) of the Little Bear Homeowners Association (Association) for determining noncompliance with the Association's *Declaration of Covenants, Conditions, Easements and Restrictions* (Covenants) and for implementation of enforcement actions when deemed appropriate in instances of noncompliance. More specifically, these Procedures are created and adopted by the Board to satisfy the requirement established in the Covenants under *Section 2 of Article IX – Compliance and Enforcement*<sup>1</sup>, as reprinted below:

*Any enforcement action taken by the Association through the Board under this Article shall only be taken pursuant to a procedure adopted by the Board that provides for due process, including the provision of verbal and written notice of any violation; sufficient time to remedy or correct the violation prior to the imposition of any fine or other sanction; and the opportunity to appeal any determination made by the Board to a panel of Association Members who are not Board Members, such panel to be selected by the Board and the Member subject to the determination. Any fine imposed shall be appropriate for the nature of the violation.*

Detailed procedures are provided to give guidance for resolving in a fair and consistent manner many of the issues which may arise in applying the Covenants to actual situations. However, the Members of the Association and Board cannot be expected to be fully familiar with formal complaints, meetings, filing deadlines, and related procedures. As a result, mistakes and misunderstandings may arise which are not of major significance in reaching satisfactory resolution of the issues. Therefore, it is expected that these Procedures will be applied in a tolerant way, and that procedural errors which do not have a major impact will be excused if possible without compromising the underlying purpose of the Covenants. To foster a sense of neighborhood, it is emphasized that these Procedures should be a choice of last resort. Our Association values the sense of community and mutual respect that can arise and strengthen from working through disagreements and conflicts with care.

### **Adoption of these Procedures**

These Procedures, now dated May 12, 2016, were approved by a majority vote of all Board Members on April 26, 2016, pending their review by legal counsel. That legal review was completed and the revised Procedures were distributed to all Board Members for final approval on May 10, 2016. Between May 10<sup>th</sup> and 12<sup>th</sup>, 2016, eight of the nine Board Members voted to approve and adopt the Procedures, with one Board Member not voting. Accordingly, as of May 12, 2016, these Procedures are hereby adopted by the Board and the Association and considered to be in effect as of May 12, 2016. All Association Members will be provided with a copy of these Procedures and they will be recorded at the Gallatin County, MT Clerk and Recorder's Office.

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<sup>1</sup> In September 2015, seventy-seven per cent (77%) of the Voting Interests of our Association voted in favor of a resolution to amend our Covenants by passing *Article IX - Compliance and Enforcement*. That Article was subsequently adopted by the Board on September 9, 2015, notarized and recorded on September 16, 2015 at the Gallatin County Courthouse as part of a package of four Revisions and Amendments to our Covenants.

### **Revisions to these Procedures**

It is recognized that from time to time these Procedures may need to be modified or updated to enhance their effectiveness in response to the experiences of the Board and Members, amendments to our Covenants or By-Laws, legal developments or other factors. The Board shall revise these Procedures only after thorough discussion and only upon the favorable vote by a majority of the total Board Members. Any revision of these Procedures must be promptly communicated to the entire Membership of the Association.

## **PROCEDURES for ENFORCEMENT of COVENANTS**

### **1. Recognition and Reporting of Possible Noncompliance**

Obvious instances of noncompliance with Covenants (Noncompliance) that can be seen from road ways or from other LBHOA properties may be identified and addressed at regular or special Board meetings. Complaints of alleged Noncompliance by Association Members will be addressed by the Board after a complaint is submitted in writing by the complaining Member (Complainant). Any such complaint should be specific in its description of the alleged Noncompliance and the Covenant section(s) believed to be violated. Where practical, Members are encouraged to seek informal, non-confrontational resolution of the matter prior to submitting a written complaint to the Board. The Board cannot guarantee confidentiality, and the resolution of the matter may require or result in the identification of the complaining Member. The Board may decide to address the alleged Noncompliance immediately at a special meeting or at a regular Board meeting depending on the urgency of the situation.

### **2. Evaluation by the Board of Alleged Noncompliance and Complaints**

The Board may take under advisement, on a case-by-case basis, review of a complaint or observation of possible Noncompliance with Covenants. Any Board Member that cannot be impartial in the matter before the Board or otherwise has a conflict of interest must disqualify himself or herself from the deliberation and voting. In general, a person will be considered to have no conflict of interest if he or she will receive no greater benefit or detriment from the possible outcome than will the general membership of the Association. Board decisions in all enforcement matters, including those associated with a hearing will be based on a majority vote of all non-disqualified and non-abstaining Members of the Board, and not upon a majority of those present at a particular meeting. At least fifty (50) percent of the current Board Members must be present in person or by teleconference to convene a hearing.

If upon review of the matter it appears to the Board that a violation of the Covenants has taken place, the Board will first contact the Association Member responsible for the alleged non-compliance (Responsible Party), either in person or in writing to determine if the alleged Noncompliance can be fully resolved in a timely manner by negotiation. If so resolved to the Board's satisfaction, no further action will be required.

### **3. Issuance of a Covenant Compliance Notice by the Board**

If the Board's initial attempt to resolve the Noncompliance is not successful in the sole judgment of the Board, a written Covenant Compliance Notice (CCN) may be served in person or via registered or certified mail to the Responsible Party. Prior to the issuance of a CCN, the Board may consult legal counsel or other resources to evaluate its enforcement options in the best interest of the Association. A separate vote by the Board will be required to authorize the issuance of a CCN.

Any CCN issued by the Board must include the following:

- a) A clear description of the alleged Noncompliance and the specific Covenant Article(s) and Section(s) violated;
- b) A requirement that the alleged Noncompliance be corrected within 30 days of receipt of the CCN (or longer based on the Board's discretion), and recommended actions to be taken to correct the matter;
- c) An invitation to appear before the Board for a hearing to respond to the CCN, with such hearing scheduled to occur at a stated time and place no less than 15 or more than 30 days from the date of receipt of the CCN, with rescheduling possible for good cause;
- d) A copy of these *Procedures for Enforcement of Covenants* and *Article IX – Compliance and Enforcement* from our Covenants; and,
- e) Notice that a non-response to the CCN or non-appearance at a requested hearing (either in person, by teleconference, by representative or by written submission of evidence), may result in a default ruling of Noncompliance, and the imposition of fines and/or other sanctions as allowed in our Covenants, including special assessments to bring the matter into compliance and/or possible legal action.

#### **4. Scheduling and Conduct of a Hearing**

If informal negotiations between parties or between the Board and the Responsible Party and the issuance of a CCN are not successful in resolving the matter to the Board's sole discretion, then a hearing will be scheduled so that the Responsible Party will have an opportunity to state his or her case, either in person, by teleconference or in written response, and to present any evidence or witnesses in support of their case. The hearing should be scheduled in consultation with the Responsible Party if he or she is responsive, but should not take place less than fifteen (15) or more than thirty (30) days from the date of receipt of the CCN, although the Board may grant continuances with good cause. Upon the discretion of the Board and in consideration of the urgency and nature of the matter and the availability of the Responsible Party, this schedule may be modified. All Board Members who have not disqualified themselves from the matter to be heard are strongly encouraged to participate in the hearing. Association Members who are not Board Members may also attend. If the Board requests a hearing with good faith effort to accommodate the Responsible Party's schedule and the Responsible Party does not make himself or herself available in person, does not submit written response or evidence, or is otherwise non-responsive, the Board may proceed with the hearing in the absence of the Responsible Party to confirm its decisions (as described below in section 5).

The Board must set reasonable parameters for the length of the hearing and the procedures that must be followed. One Board Member should be designated as the Chair for the hearing. The hearing procedure should generally follow these steps, which should be explained to all present at the start of the hearing by the Chair:

- a) Identify the Chair of the hearing;
- b) Identify the Responsible Party;
- c) State the alleged Noncompliance and the specific Covenant Article(s) and Section(s) in question;
- d) State the Board's suggested actions that would resolve the matter and avoid the need for further action;
- e) State the possible outcomes of the meeting if the matter cannot be resolved with the Responsible Party's agreement, including fines, sanctions, or other enforcement actions that may be imposed depending on the outcome of the hearing;
- f) All remarks should be addressed to the chair;

- g) The Chair of the meeting should speak first and present evidence, if any;
- h) The Responsible Party then speaks and presents evidence, if any;
- i) The Board may then ask questions of that person;
- j) The Chair then asks if anyone else has anything to share, including statements or questions from other Association Members in attendance;
- k) If no agreement is reached between the Board and the Responsible Party during the hearing, the Board may choose to adjourn and deliberate, either privately or publicly (at the Board's discretion) in order to confirm the Board's decision;
- l) The Board specifies a date on which a written decision will be issued.

In anticipation of a possible appeal hearing or legal challenge to the Board's ultimate decision, accurate and complete notes and/or a recording of the hearing must be preserved in the Board's records. It may be appropriate to assign note taking to one or more persons not directly involved in the proceeding, and those notes should be reviewed for accuracy and completeness promptly after the hearing.

The Board, in its sole discretion, may accept a written assurance of voluntary compliance from the Responsible Party in lieu of holding a hearing and rendering a decision.

## **5. Board Decisions as a Result of the Hearing**

Based on the hearing and considering all available information, if no agreement is reached between the Board and the Responsible Party during the hearing, it is the responsibility of the Board to finally determine: the facts; whether or not a covenant has been broken; the penalty to be imposed, if any, and the enforcement date. The Board should issue its decision in writing within a reasonable time after the hearing. The Board's written decision must be delivered to the Complainant and the Responsible Party in person or via certified mail, and must also be conveyed to all Board and Association Members.

Article IX, Section 6 of our Covenants gives the Board discretion in pursuing enforcement actions, but such decisions cannot be arbitrary or capricious. The Board may find that the alleged Noncompliance did or did not occur, or that insufficient evidence was presented to make a decision. The legal standard of proof for a hearing is "a preponderance of evidence", meaning more creditable evidence than not.

Article IX, Section 3 and Section 4 of our Covenants specify the various enforcement actions and sanctions available to the Board.

## **6. Schedule of Fines**

The following fine schedule is hereby adopted by the Board and will be circulated to all Association Members. The Board believes these fines to be reasonable and to be proportional to the significance of the violation. Fines should be levied in accordance with the policies and procedures of our Covenants, By-Laws and Procedures adopted by the Board. Fines cannot be imposed without providing notice and an opportunity for a hearing. The purpose of a fine is not only to incentivize corrective action by the Responsible Party, but also to offset potential costs incurred by the Association in resolution of the matter.

The Board, in its sole discretion, will levy fines for instances of Noncompliance as follows:

- Fines of \$10.00 to \$20.00 per day for ongoing Noncompliance;
- Fines of \$50.00 per occurrence for singular events of Noncompliance;
- Fines may be escalated in the event of long-term or repeated Noncompliance.

All fines will accrue from date of imposition until the matter has been corrected or remedied. The Board may elect to waive or refund any fines collected if the matter is corrected or remedied promptly to the Board's satisfaction.

Additionally, as provided in Article IX, Section 3, the Board may levy a specific assessment to cover the cost incurred by the Association to bring a property into compliance.

In accordance with Article IX, Section 3 of our Covenants, fines that remain unpaid after 30 days will be subject to collection and will constitute a lien upon the Responsible Party's property.

## **7. Right to Appeal**

Any Association Member who is either a Complainant or a Responsible Party in a compliance matter in which a CCN has been issued is entitled to appeal the Board's decision on said matter after a hearing. Such an appeal must be requested in writing and signed by the appealing party with thirty (30) days of a decision rendered by the Board as a result of a hearing on the same matter. Failure to respond to a CCN, or failure to present any defense in the case of the Responsible Party, or failure to appear and present evidence in support of Noncompliance by the Complainant at the hearing convened for that CCN, or failure to request an appeal with thirty (30) days of a subsequent Board decision will result in the forfeiture of the appeal rights described here.

While awaiting an appeal hearing, any fines, sanctions, and or other enforcement actions taken by the Board as a result of the original decision will remain in place and continue to accrue. However, no liens will be filed against the property of the Responsible Party pending the outcome of the appeal, if such appeal has been properly requested by the Responsible Party or the Complainant and granted by the Board.

An appeal under these provisions will be conducted in the same manner and under the same procedures as described in Section 4 above, except that the members of the appeal panel will be composed of Association Members who are not Board Members. The members of the appeal panel will be selected by both the Board and by the Responsible Party. It will consist of three (3) members: one (1) chosen by the Board, one (1) chosen by the Responsible Party, and one (1) member selected by both parties. Selection of the appeal panel should begin as soon as possible after an appeal is requested, and the appeal hearing should be scheduled promptly after panelists are selected. All members of the appeals panel must clearly state that they are impartial and have no conflicts regarding the parties or the matter under consideration. Rulings of the appeal panel will be by majority vote of all panelists.

Decisions rendered through the appeal process will be considered final, notwithstanding any recourse available to the parties through legal proceedings.

## **8. Remedies Available and Cost Recovery**

In accordance with Article IX, Section 5 of our Covenants, all remedies set forth in the Covenants shall be cumulative of any remedies available at law or in equity. In any action to enforce the Covenants, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney's fees, court costs and the costs of collecting judgment, reasonably incurred in such action.

## **9. Provisions are Independent and Severable**

The provisions of this policy shall be independent and severable, and the invalidity of one or more of these provisions by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other revisions, which shall remain in full force and effect.

----- **End of Procedures. Only a Signature Section Follows** -----

Eight Members of the Little Bear Homeowners Association Board of Directors, voted between May 10<sup>th</sup> and 12<sup>th</sup>, 2016 to approve and adopt these *Procedures for Enforcement of Covenants*. One Board Member did not vote. The following Board Members voted to approve and adopt:

Gregg Cochrane, President  
Susan Rabatin, Co-Treasurer  
Tom Ross, Secretary

David deCaussin, Member  
Cory Wolfe, Member  
Dave Anderson, Member

Bob Lehmann, Member  
Ellen Ripplinger, Co-Treasurer

\_\_\_\_\_  
Signature, Gregg Cochrane, President

\_\_\_\_\_  
Signature, Tom Ross, Secretary

State of Montana  
County of Gallatin

This instrument was acknowledged before me on \_\_\_\_\_

By \_\_\_\_\_ and \_\_\_\_\_  
as President as Secretary  
of the Little Bear Homeowners Association Board of Directors.

Notary Signature \_\_\_\_\_  
Notary Public for the State of Montana residing at Bozeman, MT

My commission expires on: \_\_\_\_\_

[Note: Margins on the recorded version of this document were changed to comply with requirements.]